

EVIDENTIARY HEARING
BEFORE THE
CALIFORNIA ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

In the Matter of:)	
)	
Application for Certification for the)	Docket No.
Oakley Generating Station Project)	09-AFC-4
<hr/>)	

CALIFORNIA ENERGY COMMISSION
HEARING ROOM A
1516 NINTH STREET
SACRAMENTO, CALIFORNIA

FRIDAY, MARCH 25, 2011
10:00 a.m.

Reported by:
John Cota
Contract No. 170-09-002

COMMITTEE MEMBERS

James D. Boyd, Vice Chairman and Presiding Member

Carla Peterman, Associate Member

HEARING OFFICER, ADVISORS

Kourtney Vaccaro, Hearing Officer

Susan Brown, Advisor to Commissioner Boyd

Jim Bartridge, Advisor to Commissioner Peterman

STAFF, CONSULTANTS AND STAFF WITNESSES

Kevin W. Bell, Senior Staff Counsel

Pierre Martinez, Project Manager

Geoff Lesh

Dr. Suzanne Phinney, Aspen Environmental Group

Negar Vahidi, Aspen Environmental Group (via telephone)

OFFICE OF THE PUBLIC ADVISER

Jennifer Jennings, Public Adviser

Lynn Sadler, Deputy Public Adviser

APPLICANT

Scott Galati, Attorney
Galati|Blek

Greg Lamberg, Sr.
Radback Energy

Douglas M. Davy, Ph.D.
Keith McGregor
CH2M Hill

Harvey H. Haines
Kiefner & Associates, Inc.

INTERVENORS

Robert Sarvey

ALSO PRESENT

Governmental Agencies

The Honorable Jim Frazier, Mayor
City of Oakley

Rebecca Willis, Community Development Director
City of Oakley
(via telephone)

Maifiny Vang (via telephone)
California Department of Water Resources

Members of the Public

Chris Lauritzen III
Lauritzen Yacht Harbor

Craig F. Anderson, Attorney
Andersen, Roscha & Odne, LLP
representing Lauritzen Yacht Harbor and Driftwood Marina

I N D E X

	<u>Page</u>
Proceedings	1
Call to Order and Introductions	1
Opening Remarks and Overview by Hearing Officer Vaccaro	5
Land Use	16
Staff's Witness	
Negar Vahidi	
Cross-Examination by Mr. Sarvey	17
Hazardous Materials Management - Pipeline Safety	23
Applicant's Witness	
Harvey H. Haines	
Direct Examination by Mr. Galati	50
Cross-Examination by Mr. Sarvey	56
Staff's Witness	
Geoff Lesh	
(Called but not examined)	
Intervenor's Witness	
Robert Sarvey	
Cross-Examination by Mr. Galati	61
Cross-Examination by Mr. Bell	64
Alternatives	66
Staff's Witness	
Dr. Suzanne Phinney	
Cross-Examination by Mr. Sarvey	66
Transmission System Engineering	68
Briefing Schedule	71

I N D E X

	<u>Page</u>
Public Comment	
Chris Lauritzen	74
Craig Andersen	84
Rebecca Willis	92
 Closing Remarks by Presiding Member Boyd	 95
 Comments by Department of Water Resources	 96
 Adjournment	 99
 Reporter's Certificate	 100
 Transcriber's Certificate	 100

EXHIBITSFor the Staff

<u>Number</u>	<u>Description</u>	<u>Identified</u>	<u>Received</u>
304	Hazardous Materials Management	12	65

For the Applicant

<u>Number</u>	<u>Description</u>	<u>Identified</u>	<u>Received</u>
60	Testimony of Harvey Haines	11	65
61	Contra Costa County Habitat Conservancy Approval	9	70
62	Joint Stipulation, 3/15/11	7	8

For the Intervenor

<u>Number</u>	<u>Description</u>	<u>Identified</u>	<u>Received/ Withdrawn</u>
408	Hazardous Materials Management Testimony of Robert Sarvey	14	47
409	Exhibit Withdrawn - Map, PG&E Pipeline System	14	15
410	Attachment B	14	47
411	PG&E Gas Transmission Facilities Risk Management Report	14	47
412	Report of PG&E on Records and Maximum Allowable Operating Pressure Validation	14	47
413	Gas Integrity Management Inspection Manual	14	47
414	Order to Show Cause why PG&E Should not be Found in Contempt by the CPUC	14	47
415	Letter, Andersen, Roscha & Odne to the Committee, 3/24/2011	14	--

PROCEEDINGS

10:03 a.m.

1
2
3 PRESIDING MEMBER BOYD: Good morning everybody.
4 Welcome to this March 25 evidentiary hearing on the Oakley
5 Generating Station. Welcome to Sacramento. We thank all of
6 you for accommodating us and being able to come here to
7 Sacramento. Sometimes we look forward to not being in
8 Sacramento because we are too close to getting called about
9 other issues. But in any event I am looking forward to this
10 being a very successful day in terms of giving everyone
11 their opportunity to discuss the items before us today.

12 For those of you who may not recognize me or the
13 voice I am Commissioner Jim Boyd, I am the primary
14 commissioner on the siting committee for this siting case.
15 And I want to introduce to you the now official associate
16 member of the siting committee, Commissioner Carla Peterman,
17 who as you may recall has participated in an auditing sense
18 the previous meeting but now she is here as a full-fledged
19 member. And we saved her the time of having to read lots of
20 the record because she personally witnessed it by sitting in
21 on previous meetings. So Ms. Peterman, welcome as an
22 official member of the siting committee.

23 ASSOCIATE MEMBER PETERMAN: Good morning. Thank
24 you, Commissioner Boyd, glad to be here with you officially.

25 PRESIDING MEMBER BOYD: On my immediate right is

1 my advisor for this case, Ms. Susan Brown, a long-time
2 veteran of this organization who has come out of retirement
3 to help me with some of the caseload and be my able advisor.

4 At the far end of the table to my left is Jim
5 Bartridge, advisor to Commissioner Peterman. Of course to
6 my immediate left is our hearing advisor, Kourtney Vaccaro,
7 who very shortly will assume the responsibilities of
8 conducting this hearing.

9 In the back of the room I see our Public Adviser,
10 Jennifer Jennings, with her hand in the air. And seated to
11 her immediate left is our Deputy Public Adviser, Lynn
12 Sadler. These two ladies are there to help any of you with
13 issues relative to the conduct of these type hearings and
14 facilitating the public's role in these hearings. So if you
15 have any questions please seek them out.

16 And if you intend or would like to speak at this
17 hearing at the time we have public presentation and others
18 please see one of them to get a little blue card and fill it
19 out, which they will provide to us and it will give us an
20 indication of the fact that there are folks here who want to
21 speak to us who are not either the applicant or already
22 identified intervenors or the staff.

23 So with that I would like to go to the other
24 introductions so if the applicant would please introduce
25 themselves and their parties.

1 MR. GALATI: My name is Scott Galati. I'm proud
2 to represent the Contra Costa Generating Station LLC.

3 MR. LAMBERG: My name is Greg Lamberg. I'm
4 project manager and senior vice president of Contra Costa
5 Generating Station LLC.

6 A couple of folks behind -- immediately behind me
7 is Doug Davy with CH2M Hill who is our AFC project manager.
8 Behind me to the right here, Keith McGregor with CH2M Hill,
9 deputy project manager and he is doing just an outstanding
10 job on all the compliance filings we have been making over
11 the next few weeks.

12 And then seated next to Doug Davy, a gentleman by
13 the name of Harvey Haines. He is a senior pipeline
14 specialist with Kiefner & Associates out of Washington, DC
15 and he will be offering testimony later in these
16 proceedings. Thank you.

17 PRESIDING MEMBER BOYD: Thank you and welcome to
18 all of you. Our Commission staff?

19 MR. BELL: Good morning, Commissioners. Kevin W.
20 Bell, senior staff counsel for the California Energy
21 Commission, representing staff. Present with me here today
22 is project manager Pierre Martinez.

23 PRESIDING MEMBER BOYD: Welcome, Mister -- well
24 our one intervenor, Mr. Sarvey, good morning.

25 MR. SARVEY: Thank you. Robert Sarvey,

1 intervenor.

2 PRESIDING MEMBER BOYD: Welcome back to
3 Sacramento. I'd like to acknowledge and call upon any
4 public agency folks who are here to identify themselves.
5 And I note the mayor of the city of Oakley is here; welcome
6 back, good to see you again. Would you like to identify
7 yourself for the record.

8 MAYOR FRAZIER: Thank you.

9 PRESIDING MEMBER BOYD: Welcome, Mayor.

10 Now, are there any other folks from the City of
11 Oakley or any of the adjacent cities such as Antioch or the
12 County of Contra Costa, either here or on the phone, who
13 would like to identify themselves and indicate their
14 presence?

15 MS. WILLIS: Yes, on the phone is Rebecca Willis
16 from the city of Oakley.

17 PRESIDING MEMBER BOYD: Welcome.

18 MS. WILLIS: You're welcome.

19 PRESIDING MEMBER BOYD: Anyone from other state
20 and government agencies such as the U.S. Fish and Wildlife
21 Service, the California Department of Fish and Game, the
22 Department of Water Resources or from our friends at the Bay
23 Area Air Quality Management District?

24 Okay, any others that I might have missed who
25 would want to identify themselves either being present here

1 in the room or on the phone? I heard a click.

2 MS. VAHIDI: Yes, hi, this is Negar Vahidi, Energy
3 Commission land use staff.

4 PRESIDING MEMBER BOYD: Welcome. Any others?

5 Thank you. Then I am going to turn the hearing
6 over to our hearing officer now, Kourtney Vaccaro, and we
7 will proceed with the items scheduled for today. Ms.
8 Vaccaro.

9 HEARING OFFICER VACCARO: Thank you. A couple of
10 preliminary notes. First of all, Mr. Sarvey, it's nice to
11 see you present at a table with a microphone in front of
12 you. I think that will make today's proceedings go a little
13 more smoothly than on the 15th.

14 Those of you who are calling in on the phone line,
15 I think it's important that you know a couple of ground
16 rules. It's important that you mute your phone, such that
17 we don't hear all of your background noise but so that you
18 can hear us.

19 And also please do not put us on hold. When you
20 do that any Muzak or messages or anything that might be on
21 your phone line will be broadcast throughout our proceedings
22 and they will be disruptive.

23 I look about the room and I see a number of people
24 who are affiliated with a party but there are some of you
25 who it appears that you may be members of the public. And

1 if so we do ask generally that you fill out a blue card and
2 that would provide us with some information so when we get
3 to the public comment portion of this proceeding, which will
4 be at the conclusion of the evidentiary presentation, those
5 blue cards help to facilitate the public comment process.
6 Again, Ms. Jennings and Ms. Sadler in the back of the room
7 can provide assistance in that regard.

8 So I think now that we have gotten some of that
9 basic housekeeping out of the way we can get down to
10 business and address the issues that are on the agenda for
11 today's hearing.

12 By way of background, on the 15th we did have a
13 prehearing conference and we began the evidentiary hearing
14 where we addressed virtually all of the topics that are
15 going to be the subject matter for the Presiding Member's
16 Proposed Decision that will be issued by this Committee.

17 However, we had six topics that remain to be
18 addressed in some fashion, those are Land Use, Soil and
19 Water Resources, Biological Resources, Hazardous Materials
20 Management, specifically as to pipeline safety, Alternatives
21 and Transmission System Engineering.

22 Only some of those topics we are going to have
23 witness presentations. Others we were merely holding the
24 record open for the purposes of receiving documents. So in
25 that regard I would like to first check to see who in fact

1 has received some of these exhibits that we are going to be
2 discussing today on Soil and Water and Biological Resources.

3 And Mr. Galati, you provided me with some exhibits
4 this morning. I need to understand the status of prior
5 dissemination to the parties and whether or not they have
6 had an opportunity to take a look at those documents.

7 MR. GALATI: I identified three exhibits. The two
8 that are relevant to Biology -- the one that is relevant to
9 Biology and Soil and Water Resources is the joint
10 stipulation between CCGS LLC and the staff resolving the
11 issues that we resolved in the Committee-ordered workshop at
12 the last evidentiary hearing. It includes, both parties
13 agree to revisions to Soil and Water 4, deletion of Soil and
14 Water 8 and 9, modification of Soil and Water 6 and
15 modification of Biology 9 -- 19, excuse me.

16 And today I brought copies. They were executed --
17 Mr. Sarvey was given a copy, the staff has a copy and the
18 Committee was given two copies. What I will do with that
19 document is as soon as the hearing is over I will docket it
20 as well.

21 HEARING OFFICER VACCARO: Okay, thank you. And
22 just for purposes of clarification for everyone's
23 understanding, we are talking about Exhibit 62, which is a
24 joint stipulation solely between the applicant and staff.

25 (Applicant's Exhibit 62 was marked for

1 identification.)

2 HEARING OFFICER VACCARO: Because as is indicated
3 in the transcript, I think verbatim with Mr. Sarvey's words,
4 this is a stipulation that he was not going to be a party to
5 and that he was interested in briefing these topics, but
6 this is a stipulation solely between applicant and staff.
7 Is that correct, Mr. Galati?

8 MR. GALATI: That is correct.

9 HEARING OFFICER VACCARO: Is that correct,
10 Mr. Bell?

11 MR. BELL: That is correct.

12 HEARING OFFICER VACCARO: Mr. Sarvey, did I state
13 that correctly?

14 MR. SARVEY: That is correct.

15 HEARING OFFICER VACCARO: Okay. So with that we
16 held the record open to receive this document. Does anybody
17 have an objection to our going ahead and admitting this
18 document into the record at this time? Mr. Galati?

19 MR. GALATI: No.

20 HEARING OFFICER VACCARO: Mr. Bell?

21 MR. BELL: None.

22 HEARING OFFICER VACCARO: Mr. Sarvey?

23 MR. SARVEY: No objection.

24 HEARING OFFICER VACCARO: Okay, then we will deem
25 applicant's Exhibit 62 admitted into the record.

1 (Applicant's Exhibit 62 was admitted into the
2 record.)

3 HEARING OFFICER VACCARO: What else did you bring
4 with you today, Mr. Galati?

5 MR. GALATI: I brought Exhibit 61, which is
6 relevant to Land Use. The Committee had asked for proof
7 that the East Contra Costa County Habitat Conservancy in
8 fact approved the participating special entity agreement
9 that we talked about at the last evidentiary hearing, which
10 actually authorizes the executive director upon completion
11 of the Energy Commission analysis to execute the document.

12 And this is the tape coverage that we talked
13 about. I have identified it as Exhibit 61. I have given
14 personal copies to staff and to Mr. Sarvey and two copies to
15 the Committee. And as the same as Exhibit 62, I will docket
16 these as soon as the hearing is over. I'd like to offer
17 that into evidence if there is no objection.

18 (Applicant's Exhibit 61 was marked for
19 identification.)

20 HEARING OFFICER VACCARO: Okay. I think I'd like
21 to hear from Mr. Bell and Mr. Sarvey on this. But again, by
22 way of background for those who don't have the benefit of
23 understanding, what we did on the 15th, we held the record
24 open and the Committee specifically asked the applicant to
25 provide some verification or proof that these matters were

1 presented to the Conservancy and to show us some indication
2 of action by the Conservancy and this is what we are
3 receiving today. Mr. Bell, have you had an opportunity to
4 take a look at this? Do you have questions about
5 authentication or anything else that we need to discuss?

6 MR. BELL: I do not. I haven't had a chance to
7 disseminate this amongst our technical staff for review but
8 I believe the document will speak for itself. I have no
9 objection to its being admitted into evidence.

10 HEARING OFFICER VACCARO: Mr. Sarvey?

11 MR. SARVEY: I have not had an opportunity to
12 review it. Before I say I have no objection I would like an
13 opportunity to review it. So maybe we could take this up a
14 little later in the hearing after I have had a chance to
15 read it.

16 HEARING OFFICER VACCARO: Okay, I think that's
17 fair. Because my understanding is that this was
18 disseminated this morning just before this morning's
19 proceeding. So at some point we'll take a break. You can
20 go through the document, take a look at it, see what it is
21 that you might have an objection to.

22 Again, really what it is just for clarification,
23 is it is the Staff Report, Conservancy Staff Report that
24 appears to have been presented to the Governing Board of the
25 Conservancy explaining the agenda item. But we will revisit

1 Exhibit 61 after we have taken a break at some point in
2 today's proceedings.

3 Any other exhibits that you came with today,
4 Mr. Galati?

5 MR. GALATI: Yes. I previously docketed on March
6 18th the supplemental testimony of Harvey Haines regarding
7 hazardous materials and the pipeline safety issue. I
8 brought copies of that today although that was served on all
9 the parties and brought copies for the Committee that have
10 the little Exhibit 60 on the bottom. I believe that those
11 were already served, the parties have those, and I would ask
12 I guess when we open that since we'll have some live
13 testimony, I'll ask that that be identified and offered into
14 evidence at that time.

15 (Applicant's Exhibit 60 was marked for
16 identification.)

17 HEARING OFFICER VACCARO: Okay, thank you. I
18 think that's appropriate. What we are doing right now we
19 are recognizing that Exhibit 60 has been offered but we are
20 not entertaining any motions at this point. So I think, is
21 that the totality of documents that you are now bringing to
22 today's proceeding, Exhibits 60, 61 and 62?

23 MR. GALATI: That's correct.

24 HEARING OFFICER VACCARO: Okay. And at this point
25 Exhibit 62 has been admitted. We are holding over Exhibit

1 61 until later in today's proceedings to allow Mr. Sarvey an
2 opportunity to review the document and Exhibit 60 we'll
3 address when we get to the topic of Hazardous Materials
4 Management.

5 Okay, so Mr. Bell, what have you brought for us
6 today?

7 MR. BELL: What I brought is what you have,
8 Exhibit 304. It's a document in the technical area of
9 Hazardous Materials Management specifically referring to
10 pipeline safety. This document was served on the parties.
11 I believe it's posted on the Web. I brought a marked copy
12 marked Exhibit 304 for admittance into evidence -- admission
13 into evidence, which we can handle later on during this
14 proceeding.

15 (Staff's Exhibit 304 was marked for
16 identification.)

17 HEARING OFFICER VACCARO: Okay. So basically just
18 to summarize, what we have right now is Staff's Exhibit 304,
19 which you are offering but we won't get to whether or not
20 it's admitted until we get to Hazardous Materials
21 Management.

22 MR. BELL: I did have one suggestion as to that
23 topic matter when the Committee takes that up. And that
24 would be to convene a panel of witnesses for all the parties
25 to discuss that at that time. The staff's position is that

1 would be the most efficient use of time rather than each
2 party calling a separate witness. Convene all the witnesses
3 in a panel discussion.

4 HEARING OFFICER VACCARO: Okay. I think we can
5 revisit that when we get to that particular topic area.

6 MR. BELL: Okay.

7 HEARING OFFICER VACCARO: Okay. Mr. Sarvey, what
8 is it that you brought for us today, because I think you
9 have brought quite a few exhibits?

10 MR. SARVEY: Yeah, I have Exhibit 408, which is my
11 Hazardous Materials pipeline testimony. Exhibit 409 through
12 414 basically provide the information that was requested by
13 the Committee which pretty much details the documents where
14 I pulled my information out of. I don't know if you want me
15 to go through those at this time but --

16 I also have one additional document which I
17 received last night and have not had time to disseminate it
18 to the parties. It's kind of a crossover document, it's for
19 Land Use and it's also for Hazardous Materials and
20 Alternatives so it's a three-way document. So I could
21 disperse it at this time or I can wait until we get started.

22 HEARING OFFICER VACCARO: I think what would make
23 things far more efficient for everybody is I'll give some
24 context for what it is that you have provided, at least by
25 way of exhibits, 409 through 414. We'll identify the

1 document that you have to your left as Intervenor's number
2 415 and I'll give you my recommendation for how we address
3 that in just a moment.

4 MR. SARVEY: Okay.

5 HEARING OFFICER VACCARO: The background.

6 Mr. Sarvey submitted to all the parties and to the Committee
7 proposed testimony on the topic of pipeline safety. Within
8 that testimony were a number of footnotes to hypertext
9 links. And what the Committee asked Mr. Sarvey to do is to
10 produce the hard copy of each document that was referenced
11 only by way of a hypertext link. Those documents are
12 exhibits 409 through 414. However, Mr. Sarvey, perhaps you
13 can explain to the Committee and the parties where we are
14 with Exhibit 409 because that is a document that no one has
15 received.

16 (Intervenor's Exhibits 408 through 415
17 were marked for identification.)

18 MR. SARVEY: Four-oh-nine is footnote number two
19 in my Hazardous Materials testimony and it's a map that's
20 from PG&E that depicts their pipeline system. It happens to
21 be a map that the applicant has also cut and pasted into
22 their testimony and it's in the body of my testimony so I
23 did not distribute it. And I think that everybody actually
24 has a copy of it because it's in both the applicant's and my
25 testimony. So that's 409.

1 (Intervenor's Exhibit 409 was marked for
2 identification.)

3 HEARING OFFICER VACCARO: Okay. So then would you
4 be willing to withdraw your Exhibit 409 should we accept the
5 testimony of the applicant's Hazardous Materials witness?

6 MR. SARVEY: I don't believe that it's cumulative
7 evidence. It's already, it's already in the -- in my
8 testimony and Mr. Harvey Haines' testimony so I see no
9 reason to have cumulative evidence like that so.

10 HEARING OFFICER VACCARO: So yes, you will
11 withdraw Exhibit 409?

12 MR. SARVEY: Yes, I will withdraw it.

13 HEARING OFFICER VACCARO: Thank you.

14 (Intervenor's Exhibit 409 was withdrawn
15 from the record.)

16 HEARING OFFICER VACCARO: Okay. So specifically
17 with respect to the new document that you brought with you
18 this morning that we are now identifying as Intervenor's
19 Exhibit 415. I think this will be an appropriate time for
20 you to distribute that to the other parties as well as to
21 the Committee.

22 And when we break to allow you to take a look at
23 the other exhibit that we received from the Conservancy we
24 will have everybody review this document as well.

25 And while Mr. Sarvey is getting that done,

1 Mr. Bell, is it correct that your Land Use witnesses are
2 only available today by telephone or do we have someone in
3 person and someone on the phone?

4 MR. BELL: No, that is correct, it's the same
5 issue as last time with the availability of our Land Use
6 witnesses being in Southern California. They are available
7 via telephone.

8 HEARING OFFICER VACCARO: Okay. And who are those
9 witnesses?

10 MR. BELL: That is Negar Vahidi.

11 HEARING OFFICER VACCARO: And is it just one
12 witness or do we have two?

13 MR. BELL: Ms. Vahidi.

14 HEARING OFFICER VACCARO: Okay. Ms. Vahidi, are
15 you still on the line?

16 MS. VAHIDI: Yes.

17 HEARING OFFICER VACCARO: Okay. So, Mr. Sarvey, I
18 think where we will begin is on the topic of Land Use you
19 had indicated that you wanted to spend approximately ten
20 minutes cross-examining staff's witness on Land Use.
21 Ms. Vahidi is available by telephone.

22 I think what we'll do is have the court reporter
23 swear her in and then you may proceed with your cross-
24 examination. Just as a reminder. You indicated you wanted
25 approximately ten minutes so we will look to approximately

1 ten minutes of cross-examination.

2 MR. BELL: And Ms. Vaccaro, just for
3 clarification. I have no further direct testimony that I
4 would like to offer on behalf of Ms. Vahidi other than what
5 is already in her testimony so I have questions on direct at
6 this time.

7 HEARING OFFICER VACCARO: Okay, thank you, I think
8 that's an important point. All of the staff's testimony and
9 the applicant's testimony has been previously submitted and
10 admitted into the record on the topic of Land Use. So if
11 the court reporter will swear Ms. Vahidi in.
12 Whereupon,

13 NEGAR VAHIDI
14 Was duly sworn.

15 HEARING OFFICER VACCARO: Okay, Mr. Sarvey, go
16 ahead.

17 CROSS-EXAMINATION

18 BY MR. SARVEY:

19 Q Yes. When you conduct your analysis to determine
20 reasonably foreseeable land uses in the project area how do
21 you proceed with that? Who do you contact?

22 A Well we initially use information provided by the
23 applicant in their AFC but in addition to that we contact
24 the local agencies. We -- normally land use staff prepares
25 in conjunction with the visual and traffic staff we prepare

1 a letter at the outset of the project to the local agencies
2 seeking their input.

3 Q And can you tell me when the last time you had
4 contacted the local agency for reasonably foreseeable
5 projects that you may include in your analysis?

6 A With regard to, particularly with regard to a
7 reasonably foreseeable -- are you talking about cumulative
8 projects or are you talking about the project itself?

9 Q Planned projects in the area that the Oakley
10 Generating Station may have an effect on and that may have
11 an effect on the Oakley Generating Station.

12 A Yeah. You know, we haven't specifically talked
13 about that topic; the last contact would have been any
14 comments the City provided. However, we have been in
15 contact with the City pretty regularly to try and get their
16 input on various issues.

17 Q So in your land use analysis did you consider the
18 development plans of the Lauritzen Yacht Harbor and the
19 Driftwood Marina?

20 A Not those particular ones, no.

21 MR. SARVEY: Okay. Now I would like to introduce,
22 introduce my exhibit, please.

23 HEARING OFFICER VACCARO: Why don't you give us a
24 sense of what's in the exhibit. Because again, if this is
25 the Exhibit 415 that we just discussed no one has had an

1 opportunity to read it or to take a look at it.

2 MR. SARVEY: Yeah.

3 HEARING OFFICER VACCARO: So why don't you do just
4 a brief summary of what it is, the facts that are contained
5 within this that are important to the cross-examination.

6 MR. SARVEY: Well what I have given you here is a
7 letter from Andersen, Roscha & Odne, LLP and they are
8 representing the Lauritzen Yacht Harbor and the Driftwood
9 Marina. And they have plans there to build homes. They
10 have got clearance from the city and that clearance occurred
11 on July 15th. And they have a zoning text amendment to have
12 commercial/recreational and aquatic district there where
13 they plan homes, businesses, upgrade the yacht harbors, et
14 cetera. And I believe they are in the audience today so
15 they could speak to you more on their plans.

16 I believe that this project could have an effect
17 on this and it has been analyzed. I want this exhibit in
18 the record so we know that this project, number one, exists.

19 It is reasonably foreseeable, it's been granted a zoning
20 text amendment.

21 And I believe that it also has some crossover
22 implications in hazardous materials, which I'll get to
23 later, but that's the basis of the letter. Like I said, the
24 project proponent I believe is in the audience; he could
25 explain more if you wanted to hear from him. But I just

1 received the letter last night after your new deadline and
2 that's why I had not included it. It's dated March 24,
3 2011. And I would like to introduce it into evidence.

4 HEARING OFFICER VACCARO: Okay, thank you for that
5 summary and for providing clarity to the letter.

6 In fact that is a letter that has been submitted
7 to the Committee by the individuals or entities that are
8 represented by the law firm. That is something that will be
9 addressed today because the representative is here to
10 discuss this letter.

11 I think what you have done is I think perhaps
12 accurately summarized what is stated in the letter.
13 However, I am not entirely clear what this exhibit has to do
14 with this cross-examination. You asked Ms. Vahidi a very
15 specific question. You asked her whether or not the
16 analysis specifically took into consideration the Lauritzen
17 Yacht Harbor and the Driftwood Marina and she answered your
18 question.

19 So you may proceed to ask her further questions.
20 I think she did affirmatively say, no. And I think what we
21 will do is address this public comment, which is what it is,
22 this comment letter, appropriately when it is raised during
23 public comment. It will be docketed. I have given it
24 actually to the Public Adviser to ensure that it is
25 docketed. But I do not believe that this is an exhibit

1 appropriate for you to submit. You did not author it; you
2 weren't the intended recipient. You have a copy of it. But
3 it will be reflected in the record for these proceedings.

4 MR. SARVEY: Okay. Well, I really can't ask any
5 questions on the exhibit itself because the witness isn't
6 here to review it so that's a problem but I understand.

7 MS. VAHIDI: May I ask a question, Mr. Sarvey?

8 MR. SARVEY: Sure.

9 MS. VAHIDI: Is there a title --

10 HEARING OFFICER VACCARO: Ms. Vahidi, excuse me,
11 I'm going to interrupt you. During cross-examination it's
12 not a conversation, it is a question and answer period.
13 Mr. Sarvey asks you questions and then you answer. And if
14 there is a question before you that you don't understand you
15 certainly can ask for clarification but there is no question
16 before you at this time.

17 MS. VAHIDI: Okay. No, I understand. I was just
18 trying to see if I can maybe answer the question better.
19 That's fine. Thank you.

20 BY MR. SARVEY:

21 Q And is it your understanding that the project area
22 is part of a redevelopment plan?

23 A The proposed project site?

24 Q The project site and the project area are part of
25 the redevelopment plan?

1 A Yes, that's discussed in the Land Use section.

2 Q And have you evaluated the impact that the project
3 may have on other redevelopment projects and land uses
4 proposed in that redevelopment plan?

5 A Well we discussed it with regard to the impacts of
6 the project and the designations by the City, including
7 redevelopment, the redevelopment area. And that's included
8 in the discussion in the Land Use section.

9 Q And have you analyzed the project's compliance
10 with the redevelopment LORS?

11 A Yes, that's in Land Use Table 2.

12 Q Are the redevelopment documents anywhere in the
13 evidentiary record?

14 A The City's redevelopment documents?

15 Q Yes.

16 A Not that I know of. We just accessed the City's
17 site.

18 Q And when you did your land use analysis did you
19 consider the cumulative issues surrounding the siting of yet
20 another power plant in this project area?

21 A Yes.

22 Q Okay. And did you consider environmental justice
23 when you evaluated the cumulative impacts from this project
24 and other reasonably foreseeable development projects?

25 A Environmental justice usually isn't addressed in

1 land use if the socioeconomics staff determines that there
2 is no affected population. So with that regard we were not
3 informed of an affected population that would be
4 disproportionately impacted so we did not analyze it
5 further.

6 MR. SARVEY: That's all I have, thank you.

7 HEARING OFFICER VACCARO: Thank you, Mr. Sarvey.
8 Thank you, Ms. Vahidi. Before you get off the line,
9 Mr. Bell is smiling at me, which suggests that there is a
10 question or comment that he would like to make. Mr. Bell?

11 MR. BELL: No redirect, Ms. Vaccaro.

12 HEARING OFFICER VACCARO: Thank you. Thank you,
13 Ms. Vahidi, you are excused.

14 MS. VAHIDI: Oh sure, thanks.

15 HEARING OFFICER VACCARO: Okay. Again on the
16 topic of Soil and Water Resources, that was held open to
17 receive further documentation, we have already addressed
18 that topic. I actually lumped that with Biological
19 Resources as well with respect to the receipt of information
20 about the action of the Conservancy. I didn't treat it as
21 Land Use as you had previously indicated, Mr. Galati.

22 So I think basically where we are now is at the
23 Hazardous Materials Management portion of today's proceeding
24 where we were going to hear testimony perhaps on the topic
25 of pipeline safety.

1 I do understand from emails that were sent by the
2 parties to the Committee on handling procedural matters that
3 there is an interest by at least applicant and staff to
4 address some preliminary matters relating to the evidence
5 that might be submitted on this topic. I'll first let the
6 applicant state its position then we'll hear from staff,
7 we'll hear from Mr. Sarvey and of course the Committee will
8 have the last word. Mr. Galati.

9 MR. GALATI: Yes. I would like to object to
10 Mr. Sarvey's testimony and some of the exhibits on two
11 grounds. Those questions that call for an expert opinion
12 that Mr. Sarvey is not qualified to give such expert
13 opinion.

14 And the second grounds would be for those areas
15 where he is just relaying information and other documents.
16 Those are irrelevant to the proceeding or he can just do
17 that by entering that document in the record.

18 I think what has happened here is we have blurred
19 the line between evidence and testimony, which are factual
20 statements or opinions of an expert, lay-people cannot
21 provide opinions as testimony, with argument. And I believe
22 that Mr. Sarvey's testimony like -- and I believe that is
23 Exhibit -- is that 408?

24 HEARING OFFICER VACCARO: His testimony is Exhibit
25 408, yes.

1 MR. GALATI: Four-zero-eight is largely a brief
2 making argument as opposed to actual testimony. I don't
3 want to painstakingly, unless the Committee wants me to, to
4 go through each of the questions. But the relevant
5 questions that the Committee has asked about the effects of
6 OGS on the gas system, those opinions of Mr. Sarvey's should
7 be stricken, he is not qualified.

8 The questions about PG&E's system, how it
9 operates. From my perspective, all Mr. Sarvey is doing is
10 quoting other documents and then making an argument. Those
11 documents, we can talk about each one of them whether they
12 are relevant or not and so I would like Exhibit 408 stricken
13 in its entirety.

14 I will stipulate that page five, the map that
15 Mr. Sarvey wants to be able to write a brief or an argument
16 about, about what it means. That's an appropriate exhibit
17 and certainly can be used in there, it has relevance. It
18 shows the map of the site, it shows planned testing and
19 possible replacement activities of PG&E and therefore I
20 think it's directly relevant to the questions asked. So I
21 would ask for 408 to be stricken on both of those grounds.

22 HEARING OFFICER VACCARO: Do you have any concerns
23 with the exhibits 410 through 414 which are hard copies of
24 the documents that are referenced in the testimony?

25 MR. GALATI: I do with respect to -- and I

1 apologize, I don't actually have the numbers. If someone
2 could help me with the report of Pacific Gas & Electric on
3 records and maximum allowable operating pressure validation,
4 which was the March 15th filing to the California Public
5 Utilities Commission. I can't remember which one that is,
6 what number that is, Mr. Sarvey?

7 MR. SARVEY: Well I would only respond that it is
8 quoted in both your testimony and the staff's testimony.

9 MR. GALATI: No, I am not objecting to it, what I
10 want to understand is what the number is so I can refer to
11 it properly on the record. What's your exhibit, exhibit
12 number?

13 MR. SARVEY: I think it's 415.

14 MR. GALATI: I do not object to 415 coming in, we
15 can all argue about what it means.

16 HEARING OFFICER VACCARO: I think 415 was
17 actually, Mr. Sarvey, the letter that you had just brought
18 with you.

19 MR. SARVEY: Four-fourteen then.

20 HEARING OFFICER VACCARO: Four-fourteen. I have
21 414 is identified as the order to show cause why Pacific Gas
22 and Electric Company should not be found in contempt, et
23 cetera, by the California Public Utilities Commission.
24 That's identified as Exhibit 414.

25 Exhibit 413 is identified as a Gas Integrity

1 Management Inspection Manual. Exhibit 412 is identified as
2 the report of Pacific Gas and Electric Company on records
3 and maximum allowable operating pressure validation.

4 MR. SARVEY: That's the one he wants.

5 HEARING OFFICER VACCARO: Which was submitted to
6 the California Public Utilities Commission on or about
7 February 24th, 2011. Does that answer your question?

8 MR. GALATI: It's actually that one, even though
9 it says filed February 24th, that's the proceeding filing
10 date. This document, 412, is actually filed on March 15th.

11 HEARING OFFICER VACCARO: Yes, in the bottom left
12 corner it's dated March 11 -- March 15, 2011, you're
13 correct.

14 MR. GALATI: So I apologize and I'll try to clean
15 up the record. I am talking about Exhibit 412. Applicant
16 does not have an objection. We think that it is relevant to
17 the Committee's question because the Committee asked, is
18 there any public records available that may bear on Line 303
19 or 400. There is information in this public document so we
20 do not object to that coming into evidence.

21 HEARING OFFICER VACCARO: So just to make sure I'm
22 understanding you. You are taking exception to Exhibit 408.

23 MR. GALATI: Correct.

24 HEARING OFFICER VACCARO: You are taking exception
25 to Exhibit 410, 411 and 413 as well as 414; is that correct?

1 MR. GALATI: That is correct. And the grounds for
2 -- and I apologize. Again, I'm missing a couple of the
3 numbers here. Could someone help me with what exhibit
4 number the July 31st, 2008 letter from Pacific Gas and
5 Electric to the California Public Utilities Commission, what
6 number that is.

7 HEARING OFFICER VACCARO: Are you talking about
8 the -- the responses, correct? The excerpt, Attachment B?

9 MR. GALATI: No.

10 HEARING OFFICER VACCARO: That would be Exhibit
11 410.

12 MR. GALATI: That's 410.

13 HEARING OFFICER VACCARO: It's identified as
14 Attachment B, PG&E's Integrity Management Program Responses
15 to CPUC Inquiries Made in an October 21, 2010 Letter.

16 MR. GALATI: Okay. I've gone through this
17 document. The only information that seems relevant to the
18 questions that were asked is item number one, which refers
19 to Line 400 but there is no showing that it refers to the
20 milepost section that the Committee asked about.

21 So if Mr. Sarvey can show that exception number
22 one, Milepost 82.33 to 142.61 is relevant to the OGS
23 proceeding then I will not have an objection to this
24 document. But without that I see that it is irrelevant
25 entirely and I object on those grounds.

1 The Draft Order to Show Cause, was that Exhibit
2 411?

3 HEARING OFFICER VACCARO: No, Exhibit 411 is
4 identified as PG&E Gas Transmission Facilities Risk
5 Management Report. It's a letter that bears the letterhead
6 of Pacific Gas and Electric Company; it's dated July 31st,
7 2008. And it appears that this letter was submitted to the
8 Safety and Reliability Branch of the CPUC.

9 MR. GALATI: And I object on the grounds that this
10 document does not reference Line 303 or Line 400 pursuant to
11 the Committee's questions. And what I think is irrelevant
12 is PG&E's practices and procedures throughout its system;
13 that that's properly in the jurisdiction of another agency.

14 Without a showing and I would -- if Mr. Sarvey can
15 have an offer of proof of proof of how this is relevant to
16 specifically the questions the Committee asked about 303 and
17 400, especially in the vicinity of the OGS, I can see no
18 relevance to it. So I object on those grounds.

19 HEARING OFFICER VACCARO: Okay, so far we
20 understand your objection to Exhibit 408, Exhibit 410,
21 Exhibit 411, no objection to Exhibit 412. Tell us what your
22 problems are with Exhibits 413 and 414.

23 MR. GALATI: The same objection for Exhibit 413.
24 I went through this document, I may have missed it, but I
25 didn't see a single reference to Line 303 or Line 400. And

1 don't understand its relevance to these proceedings and
2 therefore object on those grounds.

3 Lastly, I object on the grounds of the draft order
4 to show cause. It's a draft from an agency, it has not been
5 finalized. It would be, for example, you know, issuing an
6 internal draft from your agency and having an exhibit. This
7 is actually being presented for the truth of the matter
8 asserted in it. And it is hearsay on those grounds and it
9 is draft hearsay, so I object on those grounds.

10 HEARING OFFICER VACCARO: Okay. Mr. Sarvey, you
11 have heard Mr. Galati's objections on behalf of the
12 applicant to your testimony and to very specific documents
13 that you have referenced within your testimony, either them
14 coming in singly or otherwise. Would you like to make a
15 brief offer of proof explaining to the Committee why you
16 believe the information in the exhibits, let's leave your
17 testimony aside for a moment, why the information in those
18 exhibits might be relevant to these proceedings.

19 MR. SARVEY: That was quite a lengthy objection so
20 I may need some refreshment here. Exhibit 410, this
21 Committee asked if there had been any maintenance or any
22 type of testing on these facilities. Exhibit 410
23 demonstrates that Line 400 had actually had some testing
24 done. And that's what the Committee asked us to provide so
25 I provided that information.

1 I do a regular review of PG&E integrity management
2 documents and the reason I do that is because in 2007 they
3 wanted to put a youth soccer park over two large PG&E
4 natural gas lines and they were proposing a pipeline waiver.

5 And instead of lowering the operating pressure because this
6 was now a class relocation or changing the pipe PG&E did not
7 want to do that, they wanted a waiver. And I opposed it,
8 successfully opposed the waiver in C703006, which is a CPUC
9 proceeding. And we had a negotiated settlement with PG&E
10 and PG&E agreed to replace the pipeline after I showed them
11 that their integrity management program was basically
12 flawed.

13 HEARING OFFICER VACCARO: Okay. I think that's
14 helpful. I think what we're doing is going more perhaps to
15 why you believe you might be qualified to offer testimony.
16 And if we could just stick to the relevance of the specific
17 exhibits because that's the issue at hand.

18 MR. SARVEY: Sure. As I said, 410, it's the --
19 unfortunately I gave you all my documents and I didn't make
20 copies of them. If I could borrow them back for a second
21 that would be helpful. I was kind of running short on ink
22 last night about midnight. Thank you.

23 That exhibit. Like Mr. Galati said, Item 1, it
24 details that Line 400 had some in-line inspection that was
25 due but in fact they chose to do an external corrosion-

1 direct assessment on the pipeline.

2 As I said, the Committee asked if there was any
3 testing that had been done on the pipelines in the last ten
4 years and I was responding to the Committee's request. So
5 that's why that, that particular footnote was in there and
6 that's why this particular exhibit is being offered.

7 HEARING OFFICER VACCARO: Okay. What about
8 Exhibit 411?

9 MR. SARVEY: Four-eleven, once again this is the
10 same situation. In 411 on page three it states that a smart
11 pig preparation for 2008 for Line 303 was -- it was in the
12 construction -- Line 303 was in the construction phase for a
13 smart pig inspection. And once again, the Committee had
14 asked us for any information on any testing that was
15 proposed or had been performed on the pipeline and I was
16 responding to the Committee's question. And I'll note that
17 the applicant and staff did not respond to that question at
18 all.

19 HEARING OFFICER VACCARO: Okay. Mr. Galati has no
20 objection to Exhibit 412 so why don't we hear your response
21 about the relevance of Exhibit 413.

22 MR. SARVEY: Four-thirteen is the Gas Integrity
23 Management Inspection Manual for PG&E. And it's basically
24 the Pipeline Hazardous Materials Safety Administration and
25 the CPUC had done an audit on PG&E's integrity management

1 program and they had uncovered some significant flaws in it.
2 some of these are the same flaws that we're dealing with in
3 the San Bruno proceeding over at the CPUC at the present
4 time.

5 And I believe that -- this probably is a
6 divergence of opinion between staff and applicant. I
7 believe that the Committee asked us to provide information
8 on the pipeline itself and staff and applicant are more
9 interested in the impact of the facility on the pipeline.
10 But I believe the question that the Committee asked and I
11 believe what this Commission is interested in, are these
12 pipelines going to affect the reliability of these projects.

13 And I believe that's what the Commission is after. I
14 believe staff and applicant's testimony is completely off-
15 base.

16 So that's why I'm offering that. This provides
17 you information on the -- on the defects in PG&E's integrity
18 management program, where they're at, what the Commission
19 needs to be aware of and what potential flaws could occur.
20 And there's several ones I could go through. They're in my
21 testimony but I'd happy to go through them now, it's totally
22 up to you.

23 HEARING OFFICER VACCARO: No, there is no need for
24 you to go through it now. If I can summarize what you said
25 in fewer words is that it is your contention that even

1 though this may not perhaps relate specifically to Lines 303
2 and 400 that you believe it goes to the bigger issue of
3 pipeline safety as it might pertain to this project.

4 MR. SARVEY: And PG&E's pipeline integrity
5 management, which I believe is not adequate.

6 HEARING OFFICER VACCARO: Okay, what's your
7 relevance offer of proof on Exhibit 414?

8 MR. SARVEY: Four-fourteen, as Mr. Galati has
9 said, is actually a draft, I'll concede that. I just
10 received the final last night, I didn't have the time to
11 enter it into the record.

12 But what this basically outlines is that PG&E has
13 been setting maximum allowable operating pressures by
14 historical operating pressures that they have used rather
15 than actually reviewing the as-built construction drawings
16 of the pipeline. Determining the weakest link in the
17 pipeline and setting the maximum allowable operating
18 pressure to the weakest link.

19 It also -- it also shows that PG&E may or may not
20 even understand what the NTSB and what the CPUC are asking
21 them to provide. And there's currently several, more than
22 several CDs that contain the information that the Committee
23 wants on testing, as-built drawings. They may or may not
24 have it for these two lines but I do have a public records
25 request in to the PUC and CPSD. When I get that information

1 I'll provide it to the Committee.

2 HEARING OFFICER VACCARO: Okay, thank you. Just
3 by way of clarification, what does this exhibit relate to
4 specifically in these proceedings? I understood what you
5 said but can you please tie the document by way of an offer
6 of proof to these proceedings, briefly.

7 MR. SARVEY: Yes. The Committee is interested in
8 the integrity of Line 303 and Line 400. And particularly
9 this document shows that to date PG&E has not provided the
10 as-built drawings, it has not provided the analysis that you
11 could use to conclude that these pipelines are safe.

12 And we could have all the pipeline experts in the
13 world in the room. But if we don't have the documents, the
14 drawings and all the specifications of the valves and
15 everything we can't really determine whether these pipelines
16 are completely safe. And that's the issue that NTSB and
17 CPUC are trying to get this information out of PG&E and
18 that's the relevancy of this particular exhibit.

19 HEARING OFFICER VACCARO: Okay, thank you.
20 Mr. Sarvey, how did you come by all of these documents,
21 Exhibits 409 through 414? Meaning specifically, where did
22 you get them? What's the source?

23 MR. SARVEY: They're from the CPUC website.

24 HEARING OFFICER VACCARO: All of them were
25 obtained from the CPUC website?

1 MR. SARVEY: Yes, all of them were. The Committee
2 had asked specific questions, I did my best to answer them.

3 And I believe that these are all relevant documents to the
4 Committee's inquiry.

5 HEARING OFFICER VACCARO: Thank you, Mr. Sarvey.

6 Mr. Bell, you too like the applicant had indicated
7 some concern with respect to Mr. Sarvey's testimony.
8 Setting that particular topic aside, Exhibit 408 itself, and
9 right now we are just addressing the exhibits. Mr. Galati
10 on behalf of the applicant raised a number of objections.
11 Here is my specific question for you.

12 Do you have an objection to Exhibits 409 through
13 414? And if so, are your objections different from those
14 raised by the applicant? Because if not then would you
15 please consider joining in on that objection and not
16 repeating everything that we have already heard. But if
17 there is a difference then of course we invite you to state
18 your objections as you deem appropriate.

19 MR. BELL: Ma'am, you read my mind. I was going
20 to join with Mr. Galati's objections. I think he outlined
21 the staff's concerns as well. In that Mr. Sarvey has
22 already responded to those objections I see no reason to go
23 beyond that which the applicant has already lodged so the
24 staff will be joining those objections, specifically to
25 Items 410 through 414. It is my understanding 409 was going

1 to be withdrawn.

2 HEARING OFFICER VACCARO: Yes, you are correct,
3 409 was withdrawn. And for clarification, the applicant
4 does not object to Exhibit 412.

5 MR. BELL: Correct.

6 HEARING OFFICER VACCARO: And is that staff's
7 position as well?

8 MR. BELL: Staff is joining with the applicant on
9 those specific objections.

10 HEARING OFFICER VACCARO: Okay. And staff has no
11 objection to 412?

12 MR. BELL: None.

13 HEARING OFFICER VACCARO: Okay. Okay. I think
14 now let's turn our attention to Exhibit 408. Mr. Galati,
15 you have explained on behalf of the applicant what your
16 concerns are with Exhibit 408. Is there anything else you
17 would like to add before we hear from staff on staff's
18 objection?

19 MR. GALATI: No. I would just like to add that I
20 have no problem with Mr. Sarvey taking the evidence that is
21 in this record and making the argument that he has done in
22 his testimony in his brief. But there is a difference
23 between making argument and having expert testimony. If
24 there wasn't I could line up ten people to come in here
25 right now and tell you it's their opinion that there isn't a

1 problem with OGS connecting to 303 and 400.

2 But the Committee should require expert testimony
3 for that piece. You have two experts that you can ask
4 questions of. And while I understand that Mr. Sarvey
5 certainly has participated in proceedings in the past, not
6 an expert on pipeline safety. And that's what two of the
7 questions require answers, the rest basically are find us
8 public information about 303 and 400.

9 HEARING OFFICER VACCARO: Okay. Let me make sure
10 I'm understanding you because you have raised I think
11 actually several, several points. It sounds as though your
12 first point is that as to at least a couple of the specific
13 questions posed by the Committee it is your opinion that
14 only an expert can answer those questions.

15 And in that regard you are contending that
16 Mr. Sarvey is not an expert and therefore should not be able
17 to offer opinion testimony with respect to those specific
18 items and for that reason you are asking the Committee to
19 exclude that testimony. Did I misstate anything?

20 MR. GALATI: No, you did not misstate anything.
21 Specifically for the Committee, Mr. Sarvey's answer to
22 Question 6 and Question 7. There is no answer to Question
23 5. But Question 6 and 7 call for expert opinion testimony;
24 those should be stricken from 408. The rest is, in my mind,
25 legal argument and not testimony. His testimony should say,

1 here is an exhibit that says this.

2 HEARING OFFICER VACCARO: Okay, thank you.

3 Mr. Bell.

4 MR. BELL: Thank you. In our proceedings
5 Committees will entertain the admission of or presentation
6 of a lot of different type of information, anywhere from
7 public comment all the way up to expert testimony. And
8 there is a difference between comment and testimony.

9 I do understand that Mr. Sarvey, much like staff
10 and the applicant, did his best to provide information that
11 the Committee was seeking with respect to pipeline safety
12 and some of that information is included in the documents
13 that he has tried to submit. Whether or not they're
14 relevant he tried to provide you with the information.

15 However the document that Mr. Sarvey would like to
16 admit as expert testimony or as his testimony is not. It
17 references many of those other documents that he is free to
18 try to admit into evidence on their own but he also offers
19 opinions within that document itself that are inappropriate.

20 Mr. Sarvey lacks the requisite expertise, the necessary
21 training or experience in these areas to render an expert
22 opinion.

23 That is more along the lines of public comment,
24 which he is free to give. Any member of the public, whether
25 they are an intervenor or not, can provide comment to the

1 Committee that the Committee can consider. However, his
2 opinions as to whether or not these pipelines are safe
3 should not be considered testimony.

4 The majority of what he has provided is a brief
5 and it provides argument based on what his own conclusions
6 as an intervenor are. But those conclusions, again, in this
7 context should not be considered testimony or evidence.
8 They should be considered public comment and given what
9 weight that's worth.

10 Staff would therefore be objecting to 408 as
11 either lacking foundation in that Mr. Sarvey does not have
12 the requisite expertise to render an expert opinion. Or if
13 he is offering a lay opinion it would be not relevant as
14 evidence but more appropriately characterized as public
15 comment.

16 HEARING OFFICER VACCARO: Okay, thank you. I
17 think for the benefit of those who don't know what questions
18 six and seven are, the context is that the Committee asked
19 the parties to supplement their preexisting testimony with
20 additional testimony relating to pipeline safety. The
21 Committee enumerated questions and the parties went about
22 answering them.

23 Question number six asked: "Will increased gas
24 pressure affect or exacerbate existing conditions on Line
25 303 or Line 400? If so, explain the response."

1 Question seven: "Given that OGS might have
2 numerous start-ups and shut-downs and ramping up and down
3 over the course of any given year in response to various
4 dispatch orders, would Line 303 or Line 400 be adversely
5 affected by corresponding pressure changes?"

6 If those questions are unartful I take
7 responsibility for the unartful questions because I came up
8 with the crafting but interestingly each of the parties was
9 able to provide an answer.

10 What the applicant and the staff are objecting to
11 it sounds like in significant part is that you believe that
12 Mr. Sarvey is not an expert to provide an opinion or answer
13 those questions. That you seem to be saying, only an expert
14 can answer those questions. And for those primary reasons
15 you believe that Mr. Sarvey's testimony in that regard
16 should not be admitted.

17 You also raise issues about relevance and whether
18 it is just mere recitation of fact or argument. I think the
19 Committee understands that.

20 So once again just to ensure that we understand
21 the nature and scope of the objections. Did I get it right,
22 Mr. Galati?

23 MR. GALATI: I wanted to correct one thing. I am
24 not saying that Mr. Sarvey can't answer those questions in a
25 brief. But there is a difference between your decision,

1 which must be based on actual testimony. Mr. Sarvey can
2 write a brief about anything that he would like to that's in
3 the record. But he can't turn a brief into testimony.

4 So I am not saying he can't answer the questions.
5 He is not qualified to come here to testify as an expert
6 with opinion and it requires opinion and expert
7 qualifications to be testimony.

8 HEARING OFFICER VACCARO: Granted. And the
9 context of this whole inquiry is Exhibit 408, which is not a
10 brief it is testimony. So with the understanding that we
11 are talking about testimony and not a brief did I get it
12 correct?

13 MR. GALATI: Yes.

14 HEARING OFFICER VACCARO: Thank you. Mr. Bell?

15 MR. BELL: And that's the issue, it is being
16 proffered as testimony and staff is objecting to this brief
17 as testimony. It is not testimony. It is improper opinion
18 or it's information that is based on what work that other
19 people have done that have not been presented here.

20 HEARING OFFICER VACCARO: Okay, I think we
21 understand it. Mr. Sarvey, if you would like to please
22 respond to what you've heard.

23 MR. SARVEY: I don't know where to start but I'll
24 do my best. This Committee asked me and the other parties
25 to provide information on these two lines. And if you look

1 at staff's testimony, they are only interested in the point
2 of interconnection to these pipelines and not the lines
3 themselves. And they don't really address the lines
4 themselves.

5 And I don't think anyone in this room is
6 questioning whether the linear to the gas line and the tap
7 to the gas line are safe. I'm not questioning that at all.

8 Contra Costa Generating's position has been that
9 the Commission has no authority of the line past the first
10 point of interconnection. And their expert testimony
11 assumes that a perfectly good pipe in the ground and the
12 normal pressure fluctuations that would occur from this
13 project would not affect this pipe. And I agree. If this
14 pipe is in good condition I see no issues.

15 Now, my belief is that the Committee and the
16 Commission have a more global interest in this pipeline,
17 these pipelines, other than just the point of
18 interconnection. The Commission is responsible for the
19 reliability and the operation of these projects.

20 And without natural gas, obviously, if we would
21 have to lower the pressure in some of these lines, if there
22 was a Class 3 area we had to lower the pressure, replace the
23 line, that would affect the reliability of these projects.
24 And I know this Committee and this Commission is very
25 concerned about the safety and the issues surrounding San

1 Bruno. That being said, I basically answered the
2 Committee's questions.

3 Where my expertise comes in here is, I'm not going
4 to sit here and tell you that I can take the as-is drawings
5 of this pipeline and tell you that this pipeline is safe.
6 Because the fact is I don't have them and neither does
7 anybody in this room and only PG&E does have them and
8 possibly CPSD.

9 As far as me being an expert, I'm probably the
10 only one here in this room that's participated in the CPUC
11 proceeding on San Bruno in these pipeline issues.

12 I mentioned earlier that I have been following
13 PG&E's integrity management plan since 2007 when I was
14 involved in the first and only waiver of pipeline safety
15 regulations in the state of California. And in that
16 proceeding I did, in fact, convince PG&E to replace that
17 pipeline because their integrity management program is
18 flawed and I demonstrated it to them.

19 And I also participated in probably the first risk
20 management evaluations of pipeline safety in conjunction
21 with another expert that I hired.

22 Now as far as my educational background. I have a
23 bachelor's degree in accounting and auditing, I have a
24 master's degree in taxation and accounting. I am very
25 familiar with complex regulatory structures and programs. I

1 can look at a program, I can tell you where it's flawed.
2 PG&E's regulatory program is flawed and that's what I'm
3 speaking to.

4 I am not speaking to the maximum -- I am not
5 speaking to the effect of the Oakley Generating Station on
6 that pipeline, I am speaking to the reliability and the
7 safety of those pipelines and their affect on the Oakley
8 Generating Station. Which is quite divergent from what you
9 are being presented here and I believe that's what the
10 Committee asked us to do.

11 I don't think anybody in this room thinks that the
12 linear and the tap to the line is the danger. I don't. But
13 if we uncover information that Line 303 has hard spots, has
14 significant corrosion, has not been hydrotested. Nobody in
15 this room knows whether these two pipelines have ever been
16 hydrotested at all We don't know when they were installed,
17 we don't know the dates. That's significant information
18 that, you know, even if I was an engineer and a pipeline
19 expert and could make those calculations, without that
20 information I couldn't do it.

21 So basically I provided the Committee the terms of
22 what my expertise is as a regulatory program and I answered
23 their questions as honestly as I could. I had no intentions
24 to try to editorialize or provide a brief here. I believe
25 the Committee asked some specific questions and I don't

1 believe they got answered. And I believe we can answer them
2 if I can get this information from the Consumer Safety and
3 Protection Division. So was there any other questions about
4 my qualifications?

5 HEARING OFFICER VACCARO: I think that the
6 objections were posed. I think that you provided your
7 response to those objections and we are not going to
8 continue to hear more from any of the parties on this topic.

9 What we will do now is we will go off the record
10 until 20 after based on the clock at the back of the room.
11 Mr. Sarvey, that will give you an opportunity to review what
12 I believe was Exhibit 61. And when we come back the
13 Committee will make its ruling and we will continue with
14 these proceedings. Thank you.

15 (Off the record at 11:08 a.m.)

16 (On the record at 11:28 a.m.)

17 HEARING OFFICER VACCARO: Back on the record
18 again. We took a brief break. I think the first thing I'd
19 like to say to each of the parties is that you stated your
20 positions, I think, very well. You did it succinctly but I
21 think you certainly hit all of the important points that you
22 were trying to raise and the Committee understands each of
23 the respective positions.

24 Ultimately though, as I mentioned before, the
25 Committee does have the last word on the dispute and here is

1 what the Committee's position is. That the objections of
2 staff and applicant are duly noted for the record. However,
3 the Committee believes that the testimony, Exhibit 408, as
4 well as the exhibits that are supporting Exhibit 408, which
5 would be 410 through 414, are relevant to these proceedings.

6 The Committee will accept Exhibit 408 and Exhibits 410
7 through 414. Again, the objections are duly noted.

8 (Intervenor's Exhibits 408, 410, 411, 412,
9 413 and 414 were admitted into the record.)

10 HEARING OFFICER VACCARO: I think in light of the
11 fact that all of that will be received into the record I
12 think, Mr. Galati, you had indicated prior to today's
13 proceedings that you might be interested then in reserving
14 time for cross-examination. Is that still applicant's
15 intent?

16 MR. GALATI: Yes.

17 HEARING OFFICER VACCARO: Okay. And Mr. Bell, I
18 think you too might have indicated that you might want to
19 cross-examine Mr. Sarvey should his testimony be allowed
20 into the record.

21 MR. BELL: Yes, although with a caveat. And as I
22 understand it, the applicant does go first in cross-
23 examination. I find myself hobbled sometimes because
24 Mr. Galati or the other applicants always get to ask the
25 best questions. So I'll listen to what Mr. Galati asks,

1 listen to the answers that Mr. Sarvey gives. And based on
2 what I hear I may reserve some time to ask additional
3 questions as well.

4 HEARING OFFICER VACCARO: Okay, thank you. So for
5 the purposes of the record to be sure that we are all clear,
6 Exhibits 408, 410 and 414 will be admitted into the record.
7 Objections are noted. But at this point, Mr. Sarvey, you
8 need not make your motion since those exhibits were the
9 subject of the prior discussion.

10 I think since we are discussing exhibits and
11 testimony with respect to Hazardous Materials Management,
12 Mr. Galati, you had an exhibit that comprises witness
13 testimony. Would you please identify that and go ahead and
14 make your motion.

15 MR. GALATI: At this time I'd like to move Exhibit
16 60, which is the testimony of Harvey Haines.

17 HEARING OFFICER VACCARO: Staff, any objection?

18 MR. BELL: None.

19 MR. SARVEY: No objection.

20 HEARING OFFICER VACCARO: I'm sorry, would you
21 please repeat that.

22 MR. SARVEY: No objection.

23 HEARING OFFICER VACCARO: Thank you. Okay. And
24 that was your only exhibit with respect to Hazardous Waste
25 Management Pipeline Safety, correct, Mr. Galati?

1 MR. GALATI: That's correct as far as exhibits. I
2 do have a few questions of live testimony, please.

3 HEARING OFFICER VACCARO: Okay. Why don't we go
4 ahead and finish with the exhibits first then we'll move
5 backwards to your question.

6 Mr. Bell, again, your exhibit and your motion,
7 please.

8 MR. BELL: The staff moves Exhibit 304 into
9 evidence.

10 MR. GALATI: No objection.

11 MR. SARVEY: No objection.

12 HEARING OFFICER VACCARO: Okay, thank you.

13 Mr. Galati, you had a question or a few questions
14 with respect to testimony.

15 MR. GALATI: Can I get Mr. Haines sworn, please.

16 HEARING OFFICER VACCARO: So you're ready to move
17 forward. I thought you had procedural questions with
18 respect to testimony.

19 MR. GALATI: No, no, no.

20 HEARING OFFICER VACCARO: You'd like to put
21 Mr. Haines up for a short direct, is that what I'm
22 understanding?

23 MR. GALATI: Correct.

24 HEARING OFFICER VACCARO: Okay. Go ahead and do
25 that, then.

1 Whereupon,

2 HARVEY HAINES

3 Was duly sworn.

4 DIRECT EXAMINATION

5 BY MR. GALATI:

6 Q Mr. Haines, if you could pull the microphone
7 directly to you and speak directly into it that would be
8 helpful, thank you.

9 A Is this okay?

10 Q Yeah, that's perfect.

11 Mr. Haines, are you familiar with what we have
12 identified and admitted into evidence today, called Exhibit
13 60, which is your supplemental testimony?

14 A Yes I am, I wrote this.

15 Q And does it include a summary of your
16 qualifications attached in your résumé?

17 A Yes, it's on the back.

18 Q Would you consider yourself to be a pipeline
19 safety expert?

20 A Yes.

21 Q You heard in our brief exchange Mr. Sarvey's
22 comment about hydrotesting. I'd like to turn your attention
23 to your answer to question seven on page five and six of the
24 testimony. In that question you -- in that answer you
25 reference a standard. You mention pressure testing and you

1 mention 1.25 times the MAOP. Could you please define those
2 terms and tell us what you mean by that.

3 A Yes. When it comes to pressure cycles and how
4 they can cause a defect to grow. Gas pipelines usually
5 don't experience much pressure cycling or the pressure
6 cycling we see in them we consider it to be light cycles,
7 not very severe. But even those cycles can cause a defect
8 to go to failure if the flaw is large enough.

9 And to ensure that there are no flaws at all large
10 enough that they go to failure, if you pressure test them to
11 one-and-a-half times the Maximum Allowable Operating
12 Pressure or MAOP then generally we consider gas pipelines to
13 be safe from manufacturing flaws that could fail by pressure
14 cycle fatigue for the life of the pipeline.

15 (Audio echoing in the hearing room.)

16 Q And Mr. Haines, did you contact PG&E after you had
17 written this testimony about seeking pressure testing?

18 A Yes. We tried to --

19 HEARING OFFICER VACCARO: Excuse me, just before
20 you answer that. I'm not sure if that's -- this is our
21 system, it is not interference or background noise from the
22 WebEx. It seems as though we are getting some sort of echo.

23 Okay, I just got the green light that it's fixed so,
24 Mr. Haines, if you would answer the question. If you need
25 to repeat it, Mr. Galati, to keep the flow and the rhythm

1 please go ahead and re-ask the question if you need to.

2 BY MR. GALATI:

3 Q Mr. Haines, after you finished this testimony,
4 reviewed the March 15th filing, did you contact PG&E about
5 any information about Lines 303 or 400?

6 A Yes I did. In answering these questions we were
7 instructed to use only information that was in the public
8 domain or in the public record and we were unable to find
9 the pressure test records for these two segments, 303 and
10 400, that are connecting to this gas power plant.

11 So finally with Mr. Galati's permission I called
12 PG&E and asked them if these two sections had been pressure
13 tested. And they had both been pressure tested. They were
14 installed in 1963 and so that would mean that they were
15 installed after General Order 112 went into existence back
16 in 1961. And that order required pressure testing.

17 And I also inquired in terms of the level of what
18 the pressure test was and for Line 303 they found the
19 pressure test records and filed those to the CPUC and those
20 were well above the 1.25 times the MAOP. And for the
21 segment that's in the 400 line they are still searching for
22 those records but it has been pressure tested.

23 Q And could you get a copy of the pressure test
24 results from 303 that were filed with the PUC?

25 A No. Actually we were asking to see if we could

1 get those eight DVDs or portions of those eight DVDs so we
2 could include them as testimony. And they were given to the
3 CPUC as confidential information so they are not available
4 to the public.

5 Q I'd like to turn your attention to Exhibit --
6 excuse me for a moment -- Exhibit 410, which is Attachment
7 B, PG&E's Integrity Management Program. Specifically Item
8 One, there is an exception there. Do you see that where it
9 references Line 400?

10 A Yes. They're talking about Line 400 from mile
11 post 82 to mile post 142.

12 Q Is that near the OGS project?

13 A No it's not, it's not near the Antioch station.

14 Q Is it within a couple of miles?

15 A I don't believe so. We looked at the mile posts
16 that were in the CPUC filing. PG&E listed all of their
17 segments and what the MAOPs are on those segments. And I
18 believe this is Exhibit, excuse me, 412. And in here they
19 list all their transmission lines and they list the MAOPs
20 for all of the transmission lines. They also give mile
21 posts. And the mile posts for the sections that are close
22 to the Antioch station are not close to these ones that are
23 in Item number One.

24 Q Drawing your attention to Exhibit 413, which has
25 now been admitted. I believe that that is the inspection

1 audit report. Is that a proper characterization of that
2 document?

3 A It's probably what it is; I haven't had a chance
4 to read it in detail. I got it yesterday when I was flying
5 in from Virginia.

6 Q Are you familiar with those kinds of reports?

7 A I don't regularly review audits of pipeline
8 companies but this is not too dissimilar from what a lot of
9 the pipeline companies in the country are going through,
10 they are all getting audited by PHMSA. In California of
11 course they get audited by the CPUC rather than PHMSA. They
12 go over their procedures that they're doing in terms of
13 executing the integrity management plans.

14 And this kind of banter is what I would call it
15 between the regulator and the pipeline company, is typical
16 and they are trying to decide, you know, exactly how these
17 procedures should be followed. I didn't see anything in
18 here in my skimming that was critical in terms of a major
19 safety flaw but then I haven't had a chance to review it in
20 detail, either.

21 Q Do you believe that the OGS can safely
22 interconnect to either 303 or 400?

23 A In the documents that I have reviewed I haven't
24 seen any safety problems. To give you an example, one of
25 the questions that you all asked was is the additional load

1 from the power plant going to cause pressure excursions
2 above MAOP. And that is simply not allowed by the
3 regulation. They have equipment on the line that prevents
4 it from going MAOP. It may induce extra cycles or extra
5 pressure fluctuations but those should not be a problem, as
6 we have tried to answer in Question 7.

7 MR. GALATI: I have no further questions for this
8 witness, who is available for direct -- for cross-
9 examination.

10 HEARING OFFICER VACCARO: Before we get to cross I
11 have one question and it relates to, Mr. Haines, you
12 indicated that you had made phone contact, I believe, with a
13 representative of Pacific Gas and Electric, is that correct?

14 MR. HAINES: Yes, yes.

15 HEARING OFFICER VACCARO: Would you please share
16 with us the name and position of the individual with whom
17 you spoke and also did you commemorate or memorialize that
18 telephone conversation in any sort of writing, whether for
19 your own purposes or by way of a confirming letter?

20 MR. HAINES: I spoke with a Charles Lewis IV.
21 Charles was telling me that they have set up a group of
22 people within PG&E to answer questions from the public
23 following the San Bruno incident and he was helpful in
24 answering the questions I asked of him. I did not write
25 them down in any sort of formal communication with him, it

1 was all just oral communication over the telephone.

2 HEARING OFFICER VACCARO: Okay, thank you. Did
3 you happen to get his title?

4 MR. HAINES: I believe he's a lawyer within PG&E.

5 HEARING OFFICER VACCARO: Thank you.

6 Mr. Bell, you were getting dangerously close to
7 that microphone a few moments ago. Would you like to cross-
8 examine this witness?

9 MR. BELL: I have no questions for this witness.

10 HEARING OFFICER VACCARO: Okay, thank you.

11 Mr. Sarvey, would you like to cross-examine this
12 witness?

13 MR. SARVEY: Yes, I would. Looking for Mr. Lewis'
14 position, I wanted to answer that question. He's just an
15 attorney at law, the law department.

16 HEARING OFFICER VACCARO: Thank you.

17 CROSS-EXAMINATION

18 BY MR. SARVEY:

19 Q Mr. Haines, have you been following the CPUC
20 proceedings that have gone on related to PG&E's
21 determination of a maximum allowable operating pressure on
22 their pipeline system?

23 A Only a little bit. I have mostly been following
24 the NTSB incident investigation.

25 Q Are you aware of the issues that the CPUC is

1 raising?

2 A Yes.

3 Q And do you agree with their concerns or you
4 disagree?

5 A I think you would have to be more specific in the
6 question.

7 Q Well, particularly the fact that PG&E does not
8 have the records it needed to determine maximum allowable
9 operating pressure on many segments of their pipeline and
10 that PG&E has not been testing these pipelines. In other
11 words, looking at the weakest link in the pipeline and
12 setting the maximum allowable operating pressure on that.
13 And also the other conclusion is PG&E is establishing the
14 maximum allowable operating pressure based on historical
15 operating pressure.

16 MR. GALATI: For the record I would like to make
17 an objection of his characterization of the CPUC position.
18 He asked three -- he made three contentions in his question,
19 all asserting that that is the PUC position. I do not
20 object to him asking whether this witness agrees with this
21 premise but it is improper to characterize the PUC has made
22 a determination about any of those matters.

23 HEARING OFFICER VACCARO: The objection is
24 sustained.

25 BY MR. SARVEY:

1 Q Mr. Haines, do you believe that's a proper way to
2 establish the maximum allowable operating pressures through
3 the historical operating pressure or do you believe that you
4 should have the records, do the engineering evaluation and
5 set the maximum allowable operating pressure to the weakest
6 link in the pipeline?

7 A I'm not sure I'm going to be able to answer your
8 question directly. I think that what is going on here is a
9 response to the NTSB's recommendation. They came out with
10 seven recommendations in January. The exercise to try to
11 verify the MAOP is in answer to one of those recommendations
12 that the CPUC has asked the pipeline company. It's a
13 monumental task. And I think that any pipeline company
14 would have a hard time doing that right now because they are
15 not required to have those records at their fingertips.

16 Q And did you say that PG&E had related to you that
17 Line 400 had been pressure tested or was that just Line 303?

18 A Four hundred was pressure tested when it was
19 installed. And it would have been required to be pressure
20 tested because it was built in 1963, which was after General
21 Order 112 was put in into existence in 1961.

22 Q But did they provide you with the pressure testing
23 records?

24 A They are still looking for those. It's one of the
25 segments that they apparently weren't able to find by March

1 15 for the filing.

2 Q And in your conversations with PG&E did they
3 provide you with any external corrosion direct assessment
4 results or any pigging results for either of these lines?

5 A No and I didn't ask for it.

6 Q Have you seen any -- you mentioned that you had
7 seen some pressure fluctuation records for Line 303, is that
8 correct?

9 A No, I haven't seen any -- oh, we do have some,
10 some pressure records for Line 303 that were provided to --
11 if I can just review my testimony here. Yes, I did review a
12 spreadsheet that was given to me by Radback and this is data
13 that PG&E provided to them. It was a three year period on
14 Line 303.

15 Q And what years were those?

16 A It's from mid-2005 to mid-2008.

17 Q So you don't have a complete picture of the
18 pressure records, just those years is all they provided you
19 with?

20 A That's correct.

21 Q Okay.

22 A It's not atypical to only get a partial record.

23 Q And they didn't provide you with any pressure
24 fluctuation records on Line 400, I take it?

25 A No.

1 MR. SARVEY: Okay. Thank you, Mr. Haines.

2 HEARING OFFICER VACCARO: Mr. Galati, have you --

3 MR. GALATI: No, no redirect.

4 HEARING OFFICER VACCARO: Okay. Mr. Bell, you had
5 indicated the desire to perhaps cross-examine Mr. Sarvey but
6 I am not certain whether or not you were actually going to.
7 And he wanted to cross-examine certainly staff's witnesses.
8 Did you want to present your witnesses for a limited direct
9 before we get into the cross-examination?

10 MR. BELL: I'll call up Geoff Lesh.

11 HEARING OFFICER VACCARO: Okay, thank you.

12 And thank you, Mr. Haines. At this point we're
13 finished, thank you.

14 MR. GALATI: Can I reserve the right to bring him
15 back as a rebuttal witness should I hear Mr. Sarvey say
16 something outside his testimony?

17 HEARING OFFICER VACCARO: Yes.

18 MR. BELL: As I indicated earlier, Mr. Lesh's
19 testimony has already been admitted. I have no other direct
20 examination for Mr. Lesh; I present him for cross-
21 examination.

22 HEARING OFFICER VACCARO: Okay, if the court
23 reporter would please swear Mr. Lesh in.
24 Whereupon,

25 GEOFF LESH

1 Was duly sworn.

2 MR. SARVEY: I have no questions for Mr. Lesh if
3 that was -- you were going to ask me.

4 HEARING OFFICER VACCARO: Okay. Mr. Galati, do
5 you have any questions for this witness?

6 MR. GALATI: No questions.

7 HEARING OFFICER VACCARO: Okay, thank you.

8 MR. BELL: Thank you, Mr. Lesh.

9 HEARING OFFICER VACCARO: That was easy, Mr. Lesh,
10 thank you.

11 MR. LESH: Thank you.

12 HEARING OFFICER VACCARO: I think at this point
13 there will be questioning of Mr. Sarvey. We'll start with
14 the applicant, we'll then go to staff. However, Mr. Sarvey,
15 since you will be giving testimony you need to be sworn in.
16 Whereupon,

17 ROBERT SARVEY

18 Was duly sworn.

19 HEARING OFFICER VACCARO: Mr. Galati, your
20 witness.

21 CROSS-EXAMINATION

22 BY MR. GALATI:

23 Q Mr. Sarvey, would you consider yourself an expert
24 on pipeline design?

25 A I would consider myself an expert on integrity

1 management program on PG&E.

2 Q Have you ever prepared an integrity management
3 program?

4 A No I have not.

5 Q Have you ever conducted an integrity management
6 program?

7 A I've audited it but not conducted, no.

8 Q Have you ever worked for a pipeline company?

9 A No sir.

10 Q Have you ever worked for a regulator who regulated
11 a pipeline company?

12 A I'm a shoe repairman, Mr. Galati.

13 Q Are you familiar with proceeding 09-09-013 at the
14 California Public Utilities Commission entitled Application
15 of Pacific Gas and Electric Company Proposing Cost of
16 Service and Rates for Gas Transmission and Storage Services
17 for the Period 2011 to 2014?

18 A I believe I am, yes.

19 Q And would you agree that in that proceeding the
20 Public Utilities Commission is addressing the safety phase
21 portion or the safety and reliability of Pacific Gas and
22 Electric's gas transmission line in light of San Bruno?

23 A Yes, I would agree with that.

24 Q Are you familiar with proceeding Order Instituting
25 Rulemaking 11-02-019 from the California Public Utilities

1 Commission? It's actually entitled Order Instituting
2 Rulemaking on the Commission's Own Motion to Adopt New
3 Safety and Reliability Regulations for Natural Gas
4 Transmission and Distribution Pipelines and Relating Rate
5 Making Mechanisms.

6 A Yes, sir, I am very familiar with it.

7 Q And are you participating in that one?

8 A I am not formally an intervenor in it. I have --
9 I haven't provided any testimony or anything at this point,
10 no.

11 Q Are you familiar with California Public Utilities
12 Commission I.11-02-016 entitled Order Instituting
13 Investigation on the Commission's Own Motion Into the
14 Operations and Practices of Pacific Gas and Electric Company
15 with Respect to Facilities Records for Its Natural Gas
16 Transmission System Pipelines?

17 A I have read some of the documents, yes.

18 Q Are you participating in that proceeding?

19 A No I am not.

20 MR. GALATI: No further questions.

21 HEARING OFFICER VACCARO: Thank you.

22 Mr. Bell, do you have any questions for
23 Mr. Sarvey?

24 MR. BELL: Yes, I can be brief.

25 ///

CROSS-EXAMINATION

BY MR. BELL:

Q Mr. Sarvey, do you have any educational background in engineering?

A No, I do not.

Q Specifically do you have any educational experience in pipeline engineering?

A Pipeline engineering. Like I said, most of my expertise is related to the integrity management program of PG&E. I wouldn't say that I'm a pipeline engineer, no.

Q Have you taken any classes on that subject that you're saying that you have some expertise in?

A I don't believe there is any classes on that and I believe probably the real experts aren't present in this room. But I would say that I am very familiar with their program and have looked at it considerably over the last few years, yeah.

Q Does your employment history include any professional experience working on pipelines?

A No it does not. As I mentioned before, I'm a shoe repairman.

Q Have you ever authored any reports that have been relied on -- others in the area of pipeline safety?

A I have participated in a risk management approach which was authored by Dr. Alvin Greenberg. I did

1 participate in that particular study, yes.

2 Q But have you ever authored any documents on your
3 own?

4 A No. I have not authored any documents on my own,
5 no.

6 MR. BELL: I have no further questions.

7 HEARING OFFICER VACCARO: Okay, thank you,
8 Mr. Bell.

9 Mr. Galati, did you want to have Mr. Haines come
10 back up for any rebuttal purposes?

11 MR. GALATI: No.

12 HEARING OFFICER VACCARO: Okay, thank you.

13 Okay, then it appears to me that based on all of
14 the documentary evidence that was previously submitted on
15 Hazardous Materials Management on March 15th as well as what
16 we have done today as well as now taking in oral testimony
17 it appears that we are finished with this topic.

18 But to ensure that the record is clear, I don't
19 believe that I actually affirmatively stated that Exhibits
20 60 and 304 are admitted into the record. So for the
21 purposes of the record I want to make that clear.

22 (Applicant's Exhibit 60 and Staff's Exhibit
23 304 were admitted into the record.)

24 HEARING OFFICER VACCARO: With that I don't think
25 there is anything left to cover on the topic of Hazardous

1 Materials Management.

2 I think what we would like to do now is move into
3 the topic of Alternatives. My understanding on that point
4 is that Mr. Sarvey, you had a wish to cross-examine
5 witnesses with respect to the topic of Alternatives; is that
6 correct?

7 MR. SARVEY: Yeah, I had a couple of questions of
8 staff's witness.

9 MR. BELL: The staff calls Suzanne Phinney.

10 HEARING OFFICER VACCARO: Great, thank you. We'll
11 have Ms. Phinney sworn in, please.

12 Whereupon,

13 DR. SUZANNE PHINNEY

14 Was duly sworn.

15 CROSS EXAMINATION

16 BY MR. SARVEY:

17 Q In your testimony you classify this project site
18 as a brownfield site; is that correct?

19 A Yes, it's a disturbed site.

20 Q Isn't the project farm land of importance?

21 A I believe the farm land issue has been addressed
22 in Land Use.

23 Q So your testimony is that this project site is a
24 brownfield site even though they're growing grapes on it at
25 the present time?

1 A Yes, in the context of looking at a brownfield
2 site as one that is previously disturbed as opposed to
3 pristine and not disturbed.

4 Q And when you evaluated the site did you consider
5 the development plans around the project site or just the
6 existing conditions?

7 A My testimony does not involve looking at
8 development plans.

9 Q It seems that all these sites that you analyzed
10 are all what, within two miles of each other, is that
11 correct?

12 A I don't know the exact distance but they are in
13 the project area.

14 Q Is there any reason why a site further away was
15 not analyzed?

16 A Well in my testimony I go into detail about the
17 four sites that were analyzed within the project area. In a
18 drive-by they were identified. They were identified by the
19 applicant and we concurred with the applicant that they
20 would have adequate size and they would be close to,
21 relatively close to transmission corridors and other linears
22 required for the project.

23 We did look at a broader regional area and looked
24 for project sites that were in proximity to transmission
25 corridors and really we are not able to identify one. My

1 testimony does indicate an example location.

2 Q And in your site selection analysis did you
3 consider any environmental justice considerations?

4 A Environmental justice is dealt with in the
5 socioeconomic section of the FSA.

6 MR. SARVEY: Thank you. That's all I have.

7 HEARING OFFICER VACCARO: Thank you. Thank you,
8 Ms. Phinney, I think we have finished with your testimony.

9 And Mr. Sarvey, although you did indicate
10 initially that you had questions for both applicant's and
11 staff's witnesses it sounds like today your questions are
12 limited solely to staff, is that correct?

13 MR. SARVEY: Just staff, no questions for the
14 applicant.

15 HEARING OFFICER VACCARO: Thank you. Well then I
16 think on the topic of Alternatives, again all of the
17 documentary evidence was submitted on March 15th. I don't
18 believe there is anything else we need to add with respect
19 to Alternatives.

20 That leaves us with the final topic of
21 Transmission System Engineering. As with all of the other
22 topics the documentary evidence was introduced into the
23 record and admitted March 15th.

24 I asked the parties in advance of today's
25 proceeding whether or not anyone intended to raise any

1 questions or present direct testimony. I received no
2 answers; applicant was silent, staff was silent, Intervenor
3 Sarvey was silent.

4 So at this point I believe that what I would like
5 to do is close the record on the topic of Transmission
6 System Engineering. Do we have any objections or issues
7 with that, Mr. Galati?

8 MR. GALATI: No.

9 HEARING OFFICER VACCARO: Mr. Bell?

10 MR. BELL: None.

11 HEARING OFFICER VACCARO: Mr. Sarvey?

12 MR. SARVEY: No objection.

13 HEARING OFFICER VACCARO: Thank you. Let's turn
14 our attention back then to Exhibit 61. Mr. Sarvey, we held
15 that topic open so that you would have the opportunity to
16 review that document. Mr. Galati explained to us what the
17 document is, Mr. Bell indicated he has no objections to that
18 document being admitted into the record. When we asked you
19 if you had an objection you indicated you would like an
20 opportunity to review the document. You have had that
21 opportunity so I pose the same question. Are there any
22 objections? If so, what?

23 MR. SARVEY: I've reviewed it and I have no
24 objections.

25 HEARING OFFICER VACCARO: Okay, thank you. I

1 think we'll go ahead then and deem Exhibit 61 admitted into
2 the record.

3 (Applicant's Exhibit 61 was admitted into
4 the record.)

5 HEARING OFFICER VACCARO: Mr. Galati, is there
6 anything else in terms of evidentiary presentations or
7 topical matters on the OGS project that we need to address
8 today?

9 MR. GALATI: None.

10 HEARING OFFICER VACCARO: Mr. Bell, same question.

11 MR. BELL: Nothing further on behalf of staff.

12 HEARING OFFICER VACCARO: Mr. Sarvey, same
13 question.

14 MR. SARVEY: Nothing, thank you.

15 HEARING OFFICER VACCARO: Okay. Then as I look at
16 my housekeeping notes it appears that I have covered all
17 topics.

18 There is one important I think note that I would
19 like to leave you all with. The evidence that we took in
20 today as well as all evidence that has been taken in by the
21 Committee, it's a matter for the Committee to evaluate that
22 evidence and determine what weight to give testimony and
23 what weight to give the evidence that's presented.

24 That is something that we want all parties to keep
25 in mind. We take it all in at this point but it is for the

1 Committee to evaluate that evidence and make findings and
2 conclusions based on the evidence admitted into the record.

3 Any questions about that, Mr. Galati?

4 MR. GALATI: No.

5 HEARING OFFICER VACCARO: Mr. Bell?

6 MR. BELL: None.

7 HEARING OFFICER VACCARO: Mr. Sarvey?

8 MR. SARVEY: No questions, thank you.

9 HEARING OFFICER VACCARO: Okay. I think we'll
10 talk about briefing just very briefly. There has been an
11 indication by the parties, both March 15th as well as
12 through emails, an indication that you want to brief Soil
13 and Water Resources, Biological Resources and the topic of
14 Pipeline Safety.

15 We have given a briefing schedule to the parties.
16 It is my understanding that we will also have a three-day
17 turnaround on the transcript from today's proceedings. Do
18 any of the parties have any concerns with the briefing
19 schedule and if so please explain what they are.

20 MR. GALATI: No concerns. I would also like to
21 brief Land Use on the evidence that was presented today.

22 HEARING OFFICER VACCARO: And Mr. Bell?

23 MR. BELL: As I have indicated before, my
24 availability for reply briefs is limited, I am going to be
25 out of the state that week. However, I have made

1 arrangements to have that covered in my absence.

2 HEARING OFFICER VACCARO: Thank you. We knew you
3 would. Mr. Sarvey?

4 MR. SARVEY: Yes, I would like to brief
5 Alternatives as well. And it looks like we're having a
6 bifurcated briefing schedule here. Was that my
7 understanding?

8 HEARING OFFICER VACCARO: Well, what we have done
9 is the Committee has indicated that it would like all
10 opening briefs by March 30th and all reply briefs by April
11 6th.

12 MR. SARVEY: And that would be on all topics?

13 HEARING OFFICER VACCARO: On the topics that we
14 are agreeing upon today so not on all topics. Briefing is
15 limited to the topics that I have already identified. And
16 now based on the request of Mr. Galati and your own request
17 the Committee will allow briefing on the topic of
18 Alternatives and Land Use. All parties have the right to do
19 opening briefs and all parties have the right to file
20 responsive briefs on those topics alone. No other briefs
21 are necessary from the perspective of the Committee based on
22 all of the information that has currently been received.

23 MR. SARVEY: Well I would like to request a little
24 more time on those briefs if I could, please. And the basis
25 for my request is my Mariposa briefs are due at the same

1 time frame and I could use an extra week if that would be
2 possible.

3 HEARING OFFICER VACCARO: As I sit here at this
4 moment I am not sure that an extra week is possible. An
5 extra day or two might be possible but that is something
6 I'll need to go back and consider.

7 The reason for that somewhat cryptic answer is
8 because as this Committee has indicated, based on the
9 schedule that has been publicly -- been made publicly
10 available for some time, this Committee is moving towards
11 publishing the Presiding Member's Proposed Decision in April
12 with the intent of presenting that Presiding Member's
13 Proposed Decision to the full Commission in May.

14 So we are limited in terms of timing for briefs
15 but I will certainly go back and take a look at whether or
16 not we might be able to add an additional day or two to the
17 briefing schedule.

18 MR. SARVEY: That would be appreciated, thank you.

19 HEARING OFFICER VACCARO: At this point we will
20 move forward with the public comment. I have a few blue
21 cards and I know there are some individuals on the
22 telephone. What I would like to do is start with the folks
23 that are actually here in the room and then we will turn to
24 public comment from those on the phone.

25 I have Chris Lauritzen representing Lauritzen's

1 Marina. Would you like to please come to the podium.

2 MR. LAURITZEN: Good afternoon now. If I can
3 bring this around in the corner, please.

4 HEARING OFFICER VACCARO: Yes, you can do that.
5 You're showing us something. Let the record reflect that
6 Mr. Lauritzen is carrying an item. And once he gets back to
7 the podium he'll explain to us precisely what it is.

8 At this point again the record should reflect that
9 Mr. Lauritzen has come up to the dais, shown the Committee
10 an item. Once he begins his public comment we'll ask that
11 he explain what that item is and the significance of it.

12 And now we are being shown a second item.

13 So Mr. Lauritzen, when you get to the podium there
14 is a button there on your microphone. When you see the
15 green light that means we can hear you clearly.

16 MR. LAURITZEN: Okay, I have the green light,
17 thank you very much. My name is Chris Lauritzen III. My
18 sister Margaret and I own and operate Lauritzen Yacht Harbor
19 located in the city of Oakley.

20 We have owned the property -- my grandfather
21 purchased the property in 1942, it's been a marina since
22 1959 and running Lauritzen Yacht Harbor is the only job I
23 have ever had.

24 For the past 25 or 30 years we have been dealing
25 with the downwind pollution problem caused by the power

1 generating plants located on the unincorporated part of
2 Antioch, specifically on the Wilbur Avenue corridor. Units
3 -- Contra Costa Unit 6 and 7 has been a major polluter. And
4 we feel that part of the pollution that comes to our boats
5 has been created by Units 6 and 7.

6 On Wilbur Avenue we currently have five generating
7 plants that combined generate 1,282 megawatts of power.
8 They include Calpine, which is a peaker plant, Contra Costa
9 6 and 7, the now Gateway plant, the soon-to-be Marsh Landing
10 plant and the GWF has two plants on Wilbur Avenue.

11 When you combine that with the proposed OSG (sic)
12 plant in Oakley, when all the new plants are up and running
13 that will generate 2,176 megawatts of power in a two-and-a-
14 half mile range of where I live. The new proposed OSG plant
15 is about 2300 feet away from the back steps of my house.
16 It's going to create a noise problem. It's going to create
17 what I believe to be more of a pollution problem.

18 And as I stated about a year ago before this
19 Commission, I was concerned about what was their business
20 plan going to be for the contamination that may be exist
21 when they fire up the plant.

22 And I have a couple of picture that I presented to
23 you. And one of the pictures is -- this is the fire-up of
24 the new Gateway plant, which is supposed to be the newer and
25 greener type of energy plants that we have in the Wilbur

1 Avenue corridor. Excuse me.

2 So I'm concerned about when the new Marsh Landing
3 plant comes on board, which you folks aren't dealing with
4 today. But I am concerned about the off-wind, off-site
5 consequence when the new Oakley plant comes online. If in
6 the summertime when we have a huge problem and we don't have
7 the hydro that we had this year because of the rain runoff
8 and all these plants in Oakley and in Antioch are running
9 there is going to be a heck of an off-wind, off-site
10 contamination problem.

11 Today GenOn who owns the Contra Costa Units 6 and
12 7 washes 3,000 boats a year. When you have 2,176 megawatts
13 of power operating in the summertime how many more times are
14 the same boats in the area going to need to be washed
15 because of a start-up or shut-down from one plant or the
16 other?

17 Around the Antioch Bridge area there are five
18 different marinas. Driftwood Marina is my neighbor,
19 Lauritzen Yacht Harbor on the east side of the Antioch
20 Bridge, Bridge Marina is on the west side of the bridge
21 followed by Lloyd's Holiday Harbor followed by Sportsmen's
22 Yacht Club followed by San Joaquin Yacht Harbor. There's
23 over 1,000 boats in the area that are impacted by the power
24 grid as we have it in our area.

25 When the new Oakley site comes on board I will be

1 -- two sides of our marina will be covered by power plants,
2 to the west and to the south.

3 I'm all for business, I'm all for jobs, I'm all
4 for moving ahead. But how is that, how is that new power
5 plant going to impact our ability to develop our property
6 with commercial hotel recreation and housing? I don't know
7 the answer to that.

8 But my sister and I have been in the marina
9 business for the last 25 years. We don't have kids. We
10 want to retire. And when we have a power plant next to us
11 are we going to be able to sell our property? Are people
12 going to move away because we have continued air
13 contamination?

14 I don't think that I have to wake up in the
15 morning and have a bowl of particulate just because there
16 are power plants around us. And that's what I feel it's
17 getting down to.

18 Thank you very much for your time, I appreciate
19 it. Any questions?

20 HEARING OFFICER VACCARO: Thank you for your
21 comments. If you would please just explain for the purposes
22 of everybody else who is in the room the two items that you
23 brought to the attention of the Committee when you brought
24 them up to the dais.

25 MR. LAURITZEN: Sure. this is a piece of

1 naugahyde that came off the back seat of a power boat in our
2 marina. This is the front side, the part that you'd sit on.

3 This is the back side. As you can see the stain of the
4 particulate has gone all the way through the naugahyde.
5 It's to the point where this type of particulate won't come
6 off. The only way to clean it is to remove it and replace
7 it with new naugahyde.

8 The other cushion came off a Bayliner. It came
9 from Simpson's Yacht Sales over in Lloyd's Holiday Harbor,
10 which is closer to the Gateway plant. And then again, it's
11 something that has stained the cushion. It doesn't come
12 out. The only way to get rid of it is to replace the
13 cushion.

14 And so if you will excuse me I have two more
15 pictures. Can I go back to my seat for a second?

16 HEARING OFFICER VACCARO: Yes.

17 MR. LAURITZEN: Thank you. This is a 28 foot
18 Shamrock inboard that's dry stored at our marina. And it's
19 been at our marina for about two and a half years.

20 This is the spots which are similar to those spots
21 that came off the swim platform of our boat. Those spots
22 will not get washed out; they will not get detailed out.
23 And here is the swim platform of the Shamrock. How do I
24 encourage boats to come to our marina when we are in a
25 particulate fallout area?

1 We are not somebody that's come here to speculate
2 that the next gold rush is coming to Oakley. Oakley is my
3 community, I support it, I wish that Oakley would support
4 me. I don't feel that this project is proper for a bi-use
5 of a power generating facility and a marina. One of us
6 needs to stay and one of us needs to go. But we are trapped
7 and I don't know what the answer is.

8 Thank you for your time.

9 PRESIDING MEMBER BOYD: Mr. Lauritzen, could I ask
10 you a couple of questions? The materials you showed us from
11 the cushions. How recent or current is that?

12 MR. LAURITZEN: Well, if you remember I saw you
13 about a year ago, sir.

14 PRESIDING MEMBER BOYD: Yes, I remember.

15 MR. LAURITZEN: And this is the same cushion. The
16 cushion that I showed you originally at the other testimony,
17 that was completely replaced. We've kept this piece of
18 material just for hearings like this. But this stuff is
19 going on all the time.

20 As you recall, Contra Costa 6 and 7, they're an
21 older plant, they were built in the '50s, early '60s. They
22 are now used as kind of a peaker plant it seems like but
23 Gateway seems to be running much more. So when we see them
24 fire off this is what we see.

25 And this is what -- and this is what ends up on

1 the boats. There isn't a boat in our marina or in Driftwood
2 or in Bridge Marina that doesn't have particulate on it.
3 Pretty soon after the fire-up if they can wash it down, if
4 they can detail the boat top-side and the sides then they
5 save the boat. But if you want to take a tour down to the
6 Antioch Bridge area, there is not a marina that doesn't have
7 particulate.

8 I understand that this plant is the new system.
9 We're still going to have particulate. And how do we, how
10 do we mitigate that? How do I stay in business? And that's
11 the question. I know that we need energy in California, I'm
12 all for that. But how do you take care of the 1,000 boaters
13 around the Antioch Bridge area?

14 How do you keep my business going when gas prices
15 are going up, when people are losing their houses? We still
16 have a good customer base. But I can't fight City Hall, I
17 can't fight this. I feel like Mr. Hobbs coming to
18 Washington. I stand before you as a business person and I'm
19 fighting for my life.

20 Do we need the energy? Do we need boats? You
21 know, I want the jobs in Oakley so that people will buy
22 boats so they'll recreate and use my marina. I don't know
23 how we balance that stuff.

24 PRESIDING MEMBER BOYD: You indicated you felt
25 pretty strongly it sounded like that some of this is

1 attributable to the Gateway project. Can you discriminate
2 between the Gateway project and the older units as to what
3 the source might be?

4 MR. LAURITZEN: The only thing that we could do is
5 ask for testimony and see how many days a year the Gateway
6 plant is working versus the Units 6 and 7.

7 And I would ask a question of the experts. How do
8 you fingerprint or DNA one plant versus another? That's one
9 of the problems that we have moving forward. Because if the
10 Oakley plant fires up and Gateway fires up and Marsh Landing
11 fires up where is it coming from?

12 And the problem, the concern that I have is that
13 PG&E is eventually going to end up with the Oakley plant is
14 my understanding. They are not good corporate neighbors
15 now. The only one that is paying for any cleanup is the
16 GenOn company and they have decided that that was the
17 corporate thing to do.

18 But if the Units 6 and 7 only operate say 20 days
19 a year and Gateway is operating all the time where is the
20 stuff coming from? There is no industry to the west of us
21 anymore. Crown Zellerbach, Fiber Board, they're all gone.
22 The next industry is in Pittsburg and we have more power
23 plants there. We have the old Pittsburg plant that's
24 supplying power for the city of San Francisco now. We have
25 more -- a Calpine plant there and we have more GWF plants.

1 So if you were to combine the communities of
2 Pittsburg and Antioch I'm not sure how many megawatts that
3 is but you have over ten power plants that I'm breathing
4 every day of the week. And they continue to wash boats in
5 Pittsburg and we continue to breathe that air. And this is
6 what we get. And so GenOn is doing the right thing but it
7 isn't enough. And when we have two plants coming on board,
8 Marsh Landing and Oakley, how do we mitigate that?

9 You guys have the tools, I hope you do, to tell
10 the folks, if we build this plant how are we going to clean
11 the boats when we have 2,176 megawatts of power running in a
12 two, two-and-a-half mile stretch of ground on the
13 waterfront.

14 PRESIDING MEMBER BOYD: A couple more questions.
15 One, have you in the past discussed this problem with the
16 Bay Area Air Quality Management District?

17 MR. LAURITZEN: You know, we made phone calls in
18 the old days that brought PG&E to the table a long time ago
19 where we sat in a room just like this and around a table and
20 everybody puts their head down and says, it's not mine, it's
21 not mine.

22 I know that Mike Fleming over at Lloyd's Harbor,
23 when they get problems they call. I have not been as
24 diligent as I should about making a phone call at times so
25 I'm bad on that. If that's what it takes to get a squeaky,

1 make the squeaky wheel get oiled I will certainly. But I'm
2 a little guy.

3 PRESIDING MEMBER BOYD: Air districts have
4 nuisance laws and you might want to consider approaching the
5 air district. And you might want to consider approaching
6 the compliance staff of this agency. I think we're doing it
7 by course of this discussion with regard to the fairly new
8 Gateway plant. But see if they can ascertain anything in
9 the form of getting a better handle on the real cause of the
10 situation.

11 And we will, of course, take into account your
12 concerns with regard to the plant that's before us today so
13 I thank you. And I'm saying this as a concerned public
14 servant and as a boater for most of my life. I sold my boat
15 three years ago. I've had a boat ever since I was 17 and I
16 am still going through the withdrawal.

17 But in any event, appreciate the dilemma, maybe we
18 can help a little bit with some of the suggestions I made,
19 and we will take your concerns about the addition of yet
20 another plant as we deal with the questions of permitting
21 this plant and the questions that have been raised about
22 cumulative impacts of adding more to the area. Anyway,
23 thank you for your testimony.

24 MR. LAURITZEN: Thank you very much for your time,
25 I appreciate it.

1 HEARING OFFICER VACCARO: Mr. Lauritzen, if you
2 haven't already done so if you would please work with either
3 Ms. Jennings or Ms. Sadler on getting your various items
4 docketed.

5 MR. LAURITZEN: Thank you very much.

6 HEARING OFFICER VACCARO: Thank you. I have a
7 blue card from Craig Andersen.

8 MR. ANDERSEN: Yes. Members of the Commission and
9 Chairman, thank you for letting me speak. We submitted a
10 letter. I represent -- our law firm represents the
11 Lauritzen's and also Driftwood Marina, which is owned by the
12 Walter Family Trust, and our property is immediately
13 adjacent to the proposed site. We're approximately about
14 2,300 feet away from the proposed power facility.

15 I submitted under my signature under our law
16 firm's stationery a March 24th correspondence which was
17 transmitted electronically I believe to the Commission and I
18 hope you have copies. But if you don't I brought 12 copies
19 with me. If counsel would like a copy that's fine. But
20 that was transmitted yesterday.

21 Again, I will not go through that transmission in
22 its totalitarianism but I would submit that document as part
23 of the public comment. But I am not going to read it
24 verbatim because I think that would take a long time and
25 probably be somewhat repetitious.

1 However, I would like to comment on a few areas,
2 one on land use. It was very interesting to me.
3 Unfortunately I have not appeared as a lawyer before a
4 commission. But as a land use lawyer I have been telling
5 our clients, or we have been telling our clients for many,
6 many years now that the most important thing on their
7 property is to have multiple uses.

8 But we have been directed by a certain number of
9 individuals in municipalities and agencies, hey, it's kind
10 of the gateway to Oakley. As you can kind of see from the
11 map we control the waterfront, both marinas, and that's
12 really Oakley's access. And we looked at residential/
13 retail. Number one, that would be nice housing. Number
14 two, it would provide retail. Would it give us the highest
15 price? Maybe not.

16 Heavy industrial. It's very ironic in Contra
17 Costa County, heavy industrial. And I can testify as an
18 expert. For 35 years I have been doing this. Land use-
19 wise, heavy industrial is becoming a rarity out here and
20 their prices have just skyrocketed.

21 So we went in I believe in late 2010 to the city
22 of Oakley, probably Mr. Frazier knows the exact date, and we
23 got what we call a ZTA, a zoning text amendment. And what
24 that does is it broadens what we can -- we didn't submit an
25 actual plan to the city of Oakley but we said, hey, what can

1 we do here. So that really gave us our boundaries.

2 But putting a power plant next to us basically our
3 parcel becomes heavy industrial. From a financial
4 standpoint that's fine. From the hundreds of thousands of
5 dollars we have spent on residential and retail and
6 planning, et cetera with other agencies, with the state of
7 California, trying to say --

8 And you asked, Mr. Boyd, you asked very correctly,
9 have we spoken with other agencies. We have been directed
10 to DTSC. They have not issued any edicts to us as far as
11 what our parameters will be. They don't know, they're still
12 testing. We are not sure of the impacts of the DuPont
13 facility. We do know there are plumes under our property,
14 we have toxic invasion.

15 We might be able to have a parking lot, we might
16 be able to have houses, we might be able to have
17 restaurants. We're not sure, we don't know. We might be
18 able to build a power plant, who knows.

19 But we tried our darndest to have a facility that
20 would serve the city of Oakley, i.e. residences, retail,
21 provide tax, et cetera. And now we feel somewhat sideswiped
22 in that now a power plant is next to us.

23 The judge used to say to me, you know, play the
24 tape forward. And I think the pluses, they're clear here.
25 At least -- and again I apologize, I haven't seen all of the

1 record. But the pluses, the city of Oakley is going to
2 receive significant funds I assume. I assume the county of
3 Contra Costa a good tax base, good funds.

4 I'm not sure if this is redevelopment property.
5 Originally you had an expert testify and I'm sorry, I forgot
6 her name. Ms. Vahidi, I believe. Okay. And I don't know
7 if she was qualified or not. I found it interesting we
8 didn't qualify her beforehand. But she said she checked
9 with everybody.

10 Well, she'd only checked with the city of Oakley.
11 She hadn't checked with us. Because we're down a
12 completely different railroad track. If she had talked to
13 us, hey, fine, heavy industrial. We get the highest price
14 for our land possibly because it's a rarity in Contra Costa
15 County but no, we didn't hear from her.

16 So it's very unusual in a land use case where an
17 individual is an expert but hasn't talked to the surrounding
18 landowners. She only talks to the agency. Well I can do
19 that on the Internet. I can check the city of Oakley's
20 zoning requirements sort of in that they became a city I
21 believe in 1999 and they inherited a lot from the county so
22 it's kind of a crossover there as far as regulations. But
23 we can check that, but she didn't check with any landowners.

24 If she'd talked to us then we would have saved hundreds of
25 thousands of dollars in architects as far as that if in fact

1 we knew a power plant was going in there.

2 So anyway, there's the pluses to the city of
3 Oakley. I'm guessing about \$3 million to various agencies.

4 That's good, good for them. The county of Contra Costa,
5 they get a good tax base, the city of Oakley gets a good tax
6 base.

7 A thousand jobs at prevailing wages is what I've
8 read so far in the record. And I think the plant is
9 contemplated it will be operating in 2016. That's a lot of
10 jobs at prevailing wages, that's great. That's what we need
11 right now. So that's a plus. And then when the plant is
12 finally operational probably 15 to 20 people to operate the
13 plant.

14 And then redevelopment dollars. You know, the
15 city of Oakley and a number of cities in California, they're
16 using the redevelopment dollars I assume in this project.
17 That's what was testified earlier. So the dollars flow to
18 the city rather than the state, that'll be helpful.

19 Also, hey, we're going to have a whole bunch of
20 megawatts. I think it's 624. The question is, do we need
21 them? What are the minuses then?

22 Well the minuses are to the adjacent landowners.
23 We are affected significantly. I mean, we went by the site
24 this morning. I said, who is in Sacramento as far as this
25 poor trailer park that's right next to the site, adjacent.

1 I assume they couldn't afford to be here.

2 But you know what, there is no way we can -- they
3 can mitigate the noise. It may be possible to mitigate the
4 noise but I will testify as an expert, all our projects, the
5 cities that I have been through up and down from Washington,
6 Oregon and California, all require 60 decibels. I don't
7 know what the plant output is but it's greater than 60
8 decibels. So whatever we put in we are going to have to
9 have a mitigation that shows 60 decibels to the people that
10 are inside if they inhabit the provinces.

11 The second thing is safety. When we went back and
12 forth as far as where the pipelines were located or whatever
13 -- we think, we are not certain but we are pretty darn
14 certain that one of the pipelines is underneath our
15 property. Is it safe? So are you going to buy a house
16 that's got a pipeline of natural gas under it? I don't
17 know. But in my experience, it's going to be a tough sell.

18 And then you listen to some of the experts.
19 They're not sure if that pipeline -- when, '63, how long ago
20 was that? That was over 50 years ago it was tested. Today
21 does it work? I don't know. So those are some of the
22 minuses.

23 The other is health. I really feel just reading
24 certain articles, asthma is high out there, cancer is high
25 out there. Certain product diseases as far as breathing out

1 in the Antioch/Pittsburg area are really high because it's a
2 very heavy industrial area. We don't have good air out
3 there. This is not going to help. I can tell you that, you
4 don't need an expert. It's not going to increase the cancer
5 rate going down. It's going to go -- if anything it will go
6 up. And asthma, that's a big problem out here.

7 So again, I'm submitting our testimony, number
8 one, in the form of a letter, and number two, as far as
9 public comment. And I thank you for your time and
10 consideration. If you have any questions I'd be happy to
11 answer them.

12 PRESIDING MEMBER BOYD: I'm just curious.

13 MR. ANDERSEN: Yes, sir.

14 PRESIDING MEMBER BOYD: You say land use staff
15 talked to the city. Does the city's development plan
16 recognize and incorporate what it is you have been planning
17 here on your site?

18 MR. ANDERSEN: If I understand your question
19 correctly. We submitted to the city our conceptual plans.
20 Did we actually submit a development plan, no. But we
21 submitted concepts which included a combination of
22 residential and retail. Which would really be an add, I
23 think, to the city.

24 We hired a very, very renown developer basically
25 in Northern California to look at it and he said, yeah,

1 it'll work. As long as a certain state agency, DTSC, will
2 let us build the residences. We don't know if they will.

3 So yes, in answer to your question, we have
4 submitted that to the city. That's why our ZTA, the zoning
5 text amendment, was expanded. Originally it's somewhat
6 difficult in that the city of Oakley inherited the county
7 zoning. So we knew we could build heavy industrial, we knew
8 we could do that. That's the highest and best use out
9 there. But we wanted to put houses and retail or whatever
10 in there so that's why we did the zoning text amendment.

11 PRESIDING MEMBER BOYD: Thank you.

12 MR. ANDERSEN: Other questions? Again, thank you,
13 appreciate it.

14 HEARING OFFICER VACCARO: Mr. Andersen, I think as
15 we discussed this morning prior to the hearing convening
16 that you were also going to work with Ms. Jennings or
17 Ms. Sadler in ensuring that your document is docketed.

18 MR. ANDERSEN: Yes.

19 HEARING OFFICER VACCARO: Okay.

20 MR. ANDERSEN: And again, I repeat, my assistant
21 was very diligent in reading the rules and said we had to
22 have 12 copies. I've got plenty of copies so anybody that
23 wants copies can have them.

24 HEARING OFFICER VACCARO: Thank you.

25 MR. ANDERSEN: It's much lighter going home if I

1 can get rid of the copies. Thanks a lot, appreciate it.

2 HEARING OFFICER VACCARO: Is there anyone else in
3 the room who might wish to make a public comment?

4 Okay, I see none.

5 We'll turn to the telephones. Do we have any
6 callers who are interested in making a public comment today?

7 MS. WILLIS: Yes, this is Rebecca Willis with the
8 city of Oakley.

9 HEARING OFFICER VACCARO: Hello. We're ready to
10 hear you.

11 MS. WILLIS: Okay. I did want to clarify the
12 conversation about basically the wisdom or the decision to
13 put a power plant on this particular property.

14 As the CEC staff assessment accurately depicts in
15 the Land Use section, the city's general plan calls for this
16 property to be utility energy. And utility energy allows
17 for power plants. So we have had this designation, this
18 vision of putting a power plant on the property since 2002.

19 So for the past nine years that has been the
20 city's vision, the city's intention, and it has been very
21 public that, you know, that the land use desire for that
22 property is for a power plant. So we are not caught off
23 guard, sideswiped or surprised that there is a power plant
24 that's proposed on this property.

25 The other point that I did want to make had to do

1 with the zoning text amendment last fall. And I wanted to
2 clarify that Lauritzen Yacht Harbor and the Driftwood Marina
3 proposed an idea to help enhance our shoreline, which would
4 be to allow the marinas to include residential. That was
5 just a text amendment. There was not an actual project that
6 was reviewed for environmental compliance or that was
7 considered by our city council.

8 There are ten properties in our city that have
9 that zoning classification. So it doesn't necessarily mean
10 that a residential/marina/hotel project would end up on
11 Lauritzen, it may end up on the properties that are east.
12 We don't know because we don't have the project in front of
13 us.

14 And as Mr. Lauritzen said, you know, we don't know
15 the status of DTSC and if they would even allow residential
16 on their property. So we don't have an actual project or
17 property, all we have is a provision that would allow
18 somebody to, you know, to have a due process, due process if
19 they wanted to apply.

20 And with that, you know, we do appreciate the very
21 thorough environmental work that the CEC staff has done
22 analyzing the air quality and analyzing the noise and
23 analyzing the land use. We are very pleased and we really
24 appreciate the thoroughness that the staff has taken in
25 processing this application.

1 HEARING OFFICER VACCARO: Ms. Willis, this is
2 Hearing Advisor Vaccaro, thank you for your comments. I
3 think the applicant, staff, Mr. Sarvey and the Committee may
4 be familiar with your title and position with the city but I
5 think it would be helpful as you close out your comment to
6 actually tell us and the public what your position is with
7 the city of Oakley.

8 MS. WILLIS: Thank you. My name is Rebecca Willis
9 and I am the city's Community Development Director. I
10 oversee planning, engineering and building in the city.

11 HEARING OFFICER VACCARO: Thank you.

12 Is there anyone else on the telephone line who
13 might wish to make a public comment?

14 Hearing none and seeing no more in the room I will
15 now turn this -- yes, Mr. Andersen, you are raising your
16 hand.

17 MR. ANDERSEN: If you'd permit I'd like to respond
18 to one thing that she did say, Ms. Willis on the telephone.

19 In 2002 maybe the city of Oakley knew, we didn't
20 know as far as the power plant. So I just want the
21 Commission to know that. We did not know there was going to
22 be a power plant there.

23 HEARING OFFICER VACCARO: Thank you.

24 MR. ANDERSEN: Thank you.

25 HEARING OFFICER VACCARO: I think at this point I

1 will now turn this hearing over to the Commissioners for any
2 final comments.

3 Mr. Sarvey, though, before you leave I need that
4 binder back. Thank you.

5 PRESIDING MEMBER BOYD: Any comments,
6 Commissioner? All right. Well thank you, everybody for
7 being here today and for the contributions you made today to
8 our deliberations over this power plant project.

9 I think this pretty well concludes the public
10 hearings that will have been held or will be held with
11 regard to this project.

12 And as discussed by Ms. Vaccaro some time ago, the
13 briefings will now take place and the briefing schedule will
14 give some consideration to a little more time.

15 And then this Committee begins its in-depth
16 deliberations that ultimately will result in a PMPD as we
17 call it or a Presiding Member's Proposed Decision some time
18 in the future.

19 So if there are no other comments or questions
20 again I thank you for being here today. I thank you for
21 your interest in this project. I thank the work that many
22 of you have done to bring information to us.

23 I thank Ms. Vaccaro for her diligence on this
24 topic and I should --

25 It looks like we have somebody here perhaps.

1 Ms. Vang, did you want to make a statement? You're from the
2 Department of Water Resources, we have heard from you
3 before. It is being indicated to me that you might want to
4 say something.

5 MS. VANG: Oh yes, I'm sorry, I'm joining a little
6 late here. Yeah, I actually didn't know if there was anyone
7 on the phone representing PG&E?

8 PRESIDING MEMBER BOYD: No.

9 MS. VANG: Okay. Well then we're relatively
10 supportive of what the staff had included in their report.
11 I do understand that they feel it is not in their
12 jurisdiction.

13 I just wanted to note that I have initiated
14 contact with PG&E and I haven't heard back so I am a little
15 initially concerned of their potential, their cooperation so
16 I did want to note that to the staff.

17 And also state that we would prefer something more
18 substantive in terms of the condition of certification.

19 PRESIDING MEMBER BOYD: Can you give the audience
20 here a little better idea of the subject area you are making
21 reference to.

22 MS. VANG: Yes. The transmission reductoring
23 portion of the Oakley project. That our Banks pumping plant
24 is -- that PG&E's Tesla Contra Costa is looped into our
25 Banks pumping plant, Department of Water Resources. And the

1 project is proposing to reconnector the Contra Costa to
2 Banks portion of that particular line so there are potential
3 outages or there will be outages on that particular line
4 that we are concerned about and we would like that to be
5 properly coordinated with our, with our operations.

6 PRESIDING MEMBER BOYD: All right. I believe the
7 Committee is familiar with this issue, which was discussed
8 at our last hearing and are aware of DWR's concerns. I
9 don't know if anyone wanted to make a comment at this time.
10 Otherwise we have received your concerns and in the past we
11 have material in the record and it will be considered by
12 this Committee as we proceed with an analysis of the project
13 and our ultimate recommendations as to how we move forward.

14 Mr. Galati, you look like you are --

15 MR. GALATI: I want to respond to a couple of
16 things that have been said in the public because there is
17 some confusion. This is an issue where there is some
18 confusion and I think that it is confusion that is causing
19 Ms. Vang to have concerns that she need not have.

20 PG&E will not design nor change any downstream
21 reconnector until the Oakley project is financed, signs
22 an agreement and pays money. At that point PG&E will go to
23 the PUC, explain how these need to be done and they will
24 coordinate with all of their customers to ensure that there
25 are no impacts. And that is how it is done and works.

1 So at this time for PG&E or any utility to start
2 coordinating with DWR or the Banks pumping plant would be
3 premature. And we have done our best and made sure PG&E is
4 aware of the situation, they have a procedure for handling
5 it and there is a mechanism for this to be addressed.

6 So the idea that PG&E may not have contacted yet
7 and coordinated is because it's too soon. And it's too soon
8 because it is possible, although unlikely, that will all our
9 projects that if financing isn't obtained or construction
10 doesn't start or the Commission doesn't approve the project,
11 all of those things could happen such that reconductoring
12 may never be done. So once those things are all in place
13 then reconductoring will be designed and that work will be
14 done and coordinated with DWR as is past practices.

15 And I also wanted to just at least get in the
16 record that the issue on noise has been fully evaluated.
17 Our limit is 51 db at the trailer park and 41 or 42 db at
18 the next residential use.

19 So I just wanted to make sure. The public
20 sometimes hears some of the answers, they make comments,
21 they may not get an answer until the PMPD. But both of
22 those issues I think are fully addressed.

23 PRESIDING MEMBER BOYD: I appreciate --

24 MR. GALATI: Thank you.

25 PRESIDING MEMBER BOYD: -- that clarification,

1 thank you. And I think some members of the audience
2 probably appreciate it in particular.

3 If there are no other comments this hearing is
4 adjourned.

5 (Whereupon, at 12:45 p.m. the
6 Evidentiary Hearing was adjourned.)

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CERTIFICATE OF REPORTER

I, JOHN COTA, an Electronic Reporter, do hereby certify that I am a disinterested person herein; that I recorded the foregoing California Energy Commission Evidentiary Hearing; that it was thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing or in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 30th day of March, 2011.

JOHN COTACERTIFICATE OF TRANSCRIBER

I certify that the foregoing is a correct transcript, to the best of my ability, from the electronic sound recording of the proceedings in the above-entitled matter.

Ramona Cota, CERT*00478

March 30, 2011